814.

SUPREME COURT OF THE UNITED STATES.

No. 205.

JAMES M. CURRAN, PLAINTIFF IN ERROR,

vs.

THE STATE OF ARKANSAS, THE BANK OF THE STATE OF ARKANSAS, JOHN M. ROSS, FINANCIAL RECEIVER, AND DAVID W. CARROLL, BANK ATTORNEY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ALABAMA.

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Gideon, Printer.

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UNITED STATES OF AMERICA, *ss.*

The President of the United States of America, to the judges of the supreme court of Arkansas, greeting:

Because in the record and proceedings, as also in the rendition of a decree in a certain suit, upon an appeal in chancery from the decree of the circuit court of the county of Pulaski, in the State of Arkansas, which is in the said supreme court of the State of Arkansas before you, between the State of Arkansas, the Bank of the State of Arkansas, John M. Ross, financial receiver, and David W. Carroll, bank attorney, appellants, and James M. Curran, appellee, a manifest error hath happened, to the great damage of the said James M. Curran, as by his complaint it appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this fifteenth day of November, in the year of our Lord one thousand eight hundred and fifty-one, and of the independence of the United States the seventy-sixth year.

[SEAL.]

WM. FIELD,
Clerk of the United States circuit court,
for the eastern district of Arkansas.
By M. L. BELL, *D. C.*

Fee for writ of error $2 00. Received payment of plaintiff.
M. L. BELL.

STATE OF ARKANSAS.

I, Thomas Johnson, chief justice of the supreme court of the State

of Arkansas, do hereby allow this writ of error, and direct the clerk of said supreme court to make and certify the transcript of said cause as commanded.

Given under my hand, at Little Rock, this 15th day of November, A. D. 1851, and on the day of the adjournment of said court.

THOMAS JOHNSON,
Chief justice of the supreme court of Arkansas.

STATE OF ARKANSAS,
In the supreme court, ss.

I, Luke E. Barber, clerk of said supreme court, hereby certify, that, in obedience to the command of this writ of error, and the allowance thereof by the honorable the chief justice of our supreme court, I have made out and certified a full, true, and complete transcript of the record and proceedings in said cause, except as stated in the certificate thereof, which is hereto attached, and now sent openly to the Supreme Court of the United States, as commanded.

In testimony whereof I have hereto set my hand, as clerk of said court, and affixed the seal of said court, at my office in the [SEAL.] city of Little Rock, this 21st day of November, A. D. 1851.

L. E. BARBER, *Clerk.*

STATE OF ARKANSAS, *sct.*

Be it remembered, that at a supreme court of the State of Arkansas, begun and held at the court-house in the city of Little Rock, on the first Monday, being the 7th day of July, A. D. 1851, before the honorable Thomas Johnson, chief justice, the honorable Christopher C. Scott, and the honorable David Walker, judges, were the following proceedings in the case of

THE STATE OF ARKANSAS, the Bank of the State of Arkansas, John M. Ross, financial receiver, and David W. Carroll, attorney of said bank, appellants,
vs.
JAMES M. CURRAN, appellee.

Appeal from Pulaski circuit court in chancery.

Be it remembered, that heretofore, to wit, on the 20th day of March, A. D. 1850, the said appellant, the Bank of the State of Arkansas, filed in the office of the clerk of said supreme court the transcript of the record of said circuit court in this cause, which is in the words following, to wit:

Pleas had before the honorable William H. Field, judge of the Pulaski circuit court, in chancery sitting, on the 23d day of February, A. D. 1850, in the following entitled case, to wit:

JAMES M. CURRAN, complainant,
vs.
THE BANK OF THE STATE OF ARKANSAS, John M. Ross, financial receiver, and David W. Carroll, attorney of said bank, the State of Arkansas, and Charles J. Krebbs, defendants. } In chancery.

STATE OF ARKANSAS,
County of Pulaski, to wit:

In the Pulaski circuit court, in chancery, to the December term thereof, A. D. 1849, unto the honorable the circuit court of said county of Pulaski, in chancery sitting.

Your orator, James M. Curran, who resides in said county, brings this his bill of complaint against the Bank of the State of Arkansas, John M. Ross, financial receiver, and David W. Carroll, attorney of said bank, the State of Arkansas, and Charles J. Krebbs, who are prayed to be made defendants hereto. Whereupon your orator complains and says, that on the 2d day of November, 1836, by act of the general assembly of said State, there was incorporated the defendant, the Bank of the State of Arkansas, a corporation for banking purposes, with general powers of deposite, discount, and circulation, having all the privileges, franchises, and liabilities incident to such corporation, with a capital of one million of dollars, to be raised by the sale of the bonds of said State, and also of all public funds belonging to said State to be therein deposited, said State becoming thereby a stockholder in said bank to the amount so deposited; and it was further provided in and by said act of incorporation, that said corporation should consist of a principal bank, to be located at the city of Little Rock, and a branch thereof to be located at Fayetteville, another branch thereof at Batesville, and another branch thereof at Arkansas Post, each with power to issue bills and notes, to circulate as currency; and that the affairs of said bank should be managed and conducted by local boards of directors to be elected by the general assembly, and certain officers to be appointed by such boards, and by a general board composed of delegates from the principal bank at Little Rock, and each of said branches to hold its sessions at the principal bank at Little Rock, having a general superintending and controlling power over the business and management of said corporation. And it was in and by said act further and amongst other things provided, that the profits and dividends to be declared by said bank from time to time should be added to the amounts deposited as capital stock in said bank by said State, and form a part of said capital; and that said branch bank should at all times have on

hand a sufficient amount of specie, or specie means, wherewith to pay and redeem all its outstanding circulation; and that the bills and notes of said bank issued for circulation should be received in payment of all debts due to said State, and thereto the faith and credit of said State was in and by the act aforesaid in effect pledged and guarantied. Your orator further represents that said bank went into operation in the year 1837, and that the capital stock of said bank of one million of dollars, and the further sum of one hundred and forty-six thousand dollars, by subsequent act and authority of said general assembly was raised by the negotiation and sale of the bonds of said State; and that the public funds of said State, derived from the seminary and common school and saline fund, proceeds of per centage derived from the sale of the public lands, and chiefly from the surplus revenue of the United States, apportioned by the act of Congress to said State, amounting altogether to the sum of $350,753 $\frac{02}{100}$, were deposited in said bank, and made a part of the capital stock thereof, so that the capital stock of said bank actually realized and paid in, consisting wholly of specie and specie means, amounted to the gross sum of one million four hundred and ninety-six thousand seven hundred and fifty-three dollars and two cents.

Your orator further represents that said bank, having gone into operation and issued bills and notes for circulation to a large amount, on the 7th day of November, 1839, by resolution of the general board thereof, definitely and finally suspended specie payments, and public notice of such suspension, together with the alleged reasons therefor, was by order of said board published in all the newspapers of this State, and thenceforward said *board* bank, (with the exception of certain of her notes comparatively trifling in amount, made payable at the principal bank aforesaid, and which were for a time redeemed at the counter thereof,) has ever and utterly and notoriously refused to pay or redeem in specie any of her bills and notes issued to circulate as currency.

Your orator further represents, that on the 31st day of January, 1843, said bank continuing insolvent, and unable to meet and discharge its liabilities in specie, an act was passed by the general assembly of said State to liquidate and settle the affairs of said bank. At that time the assets of said bank amounted to the sum of $1,832,120 45, consisting of bonds, bills, and notes due to and discounted by her, and of notes of other banks, specie on hand, and real estate; and that more than four-fifths of such assets consisted in choses in action and debts due to said bank. At the same time the notes issued by said bank, in circulation, outstanding, and unredeemed, amounted to the sum of $302, 805 00, and her specie on hand to the sum of $90,301 01. And your orator avers that at the same time of the gross assets aforesaid of said bank, the sum of $1,000,000 was good, available, and collectable. By the act last aforesaid said bank was deprived of all power to loan money, or to make any further issues of her bills and notes for circulation, the principal bank, and each of said branches, were placed in the hands of an executive and financial receiver, and an attorney, to

whom were turned over the assets thereof, and who were required to collect the debts due to said bank, and to receive in payment of such debts, first, specie or the notes of said bank in circulation, and when the circulation was called in, then to receive in payment for such debts any of the bonds of said State, issued for capital stock of said bank; and that, (after reserving the sum of $2,000 in specie for expenses,) said officers were required specifically to apply all specie on hand, or that might thereafter be received, by paying the same as dividend pro rata from time to time, to and among the holders of the notes of said bank, until the circulation thereof should be wholly taken up, and then to distribute the specie remaining pro rata as dividend for the payment of interest in arrear on the bonds of the said State aforesaid, and after paying such interest to report the residue of specie, if any on hand, to the next session of the general assembly. By the same act the corporate existence of said bank, her power to contract, sue and be sued, and so forth, was expressly reserved and retained to her, and it was thereby further enacted, that all bonds given by the State to said bank, for moneys borrowed of her by the State, and which your orator avers amounted to the sum of at least $200,000, should be given up and cancelled, and the amount of same, with the interest accrued thereon, should be a credit on the capital stock of said bank, consisting of the surplus revenue and other funds aforesaid, put in by said State; and further enacted that no debtor of said bank should be garnished on any debt, demand, or judgment, owing by the bank to any person or corporation.

At the same session, by act passed over veto, on the 3d day of February, 1843, the officers of said bank were required to set over to the credit of the State the sum of $15,000 in specie, on account of the capital stock put in by the State, and which sum was thereby declared to be an especial appropriation to pay members of that general assembly, when at the same time as *your avers*, all other officers and public servants were required by existing laws or usage to receive at par, in payment of their compensation and salaries, the depreciated notes of said bank and branches.

Your orator further represents, that no pro rata dividends or payments in specie ever were made or declared to or among the holders of the notes of said bank as contemplated by said act of liquidation, and before any such dividends was or could be declared or made, the general assembly on the 4th day of January, 1845, by act to amend the act of liquidation, authorized the officers of said bank to compromise debts due to her, and take property in payment, &c., for any such debts, and required said officers to receive in payment of debts due said bank the bonds of the State for capital stock of bank, notwithstanding her outstanding bills and notes for circulation might not be taken up; and by act passed over veto, on the 10th day of January, 1845, the general assembly, at one sweep, took from said bank all her specie or par funds, and required that all specie or par funds then on hand, or that might thereafter be on hand, should be immediately transferred to

the treasury, and which were especially set apart and appropriated first and before any of said par funds were paid out for any other purpose whatever, to pay the members of that general assembly both their per diems and mileage, &c. And by said act all the current expenses of said State thereafter accruing were required to be paid in treasury warrants or State scrip; no notes of said bank were to be paid out except for salaries or indebtedness previously accrued; that nothing should be received in payment for taxes or revenue, but par funds or treasury warrants. Section 28 (being the one pledging the faith of the State that the notes issued by said bank or branches would be received in payment of all dues to the State) and so much of section 13 of the charter of said bank, as provided that certain public funds accruing to the State should be deposited in the bank and form part of its capital, were repealed, and all such funds in said bank were declared to be a deposite there to the credit of the State, subject to be drawn by appropriation, &c. And section 40 of chapter 18 of the revised statutes, requiring the State treasurer to keep his deposites in said bank was repealed, and the treasury required to be kept by the treasurer in one of the vaults of the banking house at Little Rock, and by the same act the sum of $16,000 (in State scrip) was appropriated to pay the salaries of the officers of said bank, and to pay judgments that were or might thereafter be obtained against said bank.

By act approved December 23d, 1846, the financial receivers of said bank were authorized to pay off all judgments against the bank by transferring to such judgment creditors the notes of certain non-resident debtors of the bank, provided the same be taken in payment without recourse, and provided such judgment creditor would convey to the State of Arkansas, by deed in fee simple, all real estate or property of the bank caused to be sold by him under any such judgment.

By another act of said general assembly, approved December 23d, 1846, the title to all real estate and property of every kind, purchased by said bank or taken in payment of debts due to her, was declared to vest in the State of Arkansas, and that the title for real estate so taken should be taken in the name of the State. And by another act approved December 23d, 1846, the salaries of the officers of said bank were required to be paid out of the assets of the bank.

By act of said general assembly, approved January 9th, 1849, said branches of said bank were called in and abolished, the officers thereof, except the attorneys, dispensed with, and all the assets of said branches concentrated at said principal bank at Little Rock, and placed under the control and management thereof for collection ; and by the same act the officers of said bank were also required to receive in payment of debts due to said bank the bonds of said State issued for capital of the Real Estate Bank of the State of Arkansas, (another banking institution heretofore chartered by said general assembly, the bonds therefore amounting, principal and interest, in arrear to at least $2,000,000, were collaterally secured by mortgage of real estate, and which said last mentioned bank was and is insolvent.) And it was thereby further

enacted, that in any suit instituted by said State bank she should not be ruled to give security for costs, but that the State should be liable to pay costs rendered against the bank.

Your orator further represents, that since the passage of said liquidation act of the 31st of January, 1843, whereby the State arbitrarily declared the bonds of the State given to said bank for moneys borrowed of her by the State to be cancelled, and undertook to make herself a privileged and preferred creditor of said bank; said State has from time to time, under various pretexts, wrongfully and arbitrarily taken from said bank, and appropriated the same to her own use, divers other large sums of money, in specie, notes of said State bank and branches, and notes of other banks, amounting to the further gross sum of at least $200,000.

Your orator further represents, that on and prior to the 3d day of May, 1849, being the owner and holder of sundry of the bills and notes of said bank of the State of Arkansas and its branches, duly issued for circulation pursuant to the charter thereof, prior to the year 1843, amounting to the sum of $9,355, consisting of bills of the denomination of not more than one hundred nor less than five dollars, he instituted ninety-four suits therein, numbered from one to ninety-four, both inclusive, against said bank, before John C. Peay, esq., one of the justices of the peace of said State for Big Rock township, (wherein said principal bank is situated,) in said county of Pulaski, having deposited and filed said notes and bills with said justice therefore, whereupon said justice issued process of summons in due form of law in each of said suits against said defendant, the Bank of the State of Arkansas, returnable before the said justice at his next monthly court to be thereafter holden by him at his office in the city of Little Rock, in said township, on the 12th day of May, 1849, which said several writs of summons came to the hand of the constable of said township, and were by him duly served, by delivering copies thereof at said banking house to John M. Ross, the financial receiver thereof, more than five days before the said return day, when and where the appearance of the said defendant, the Bank of the State of Arkansas, by her attorney in that behalf, and upon trial had in each of said several causes and suits before the said justice, your orator, by the consideration of the said justice, recovered against said bank for his debt and damages, together with his costs in each of said suits, amounting in the aggregate to the sum of $9,355 00 for his debt, and $5,314 25 for his damages, less a remitter for the sum of $8 00, (being $5 00 of the debt and $3 00 of the damages,) entered by your orator before the said justice on the 23d day of May, 1849, in one of said suits, being case No. 89. Your orator further represents, that on the 19th day of May, 1849, he sued out and caused to be issued by the said justice a writ of fieri facias execution of and upon each of said judgments running in the name of the State of Arkansas, duly tested and signed by said justice, and bearing date the day and year last aforesaid, and made returnable before the said justice as required by law, and directed to the constable of said

township, whereby, after *after* reciting the several and respective judgments aforesaid, the said constable was thereby commanded, that of the goods and chattels of said bank he cause to be made and levied the amount of debt, damages, and costs in each of said executions respectively mentioned, and therein endorsed; and which said several writs of execution, afterwards, on the same day and year last aforesaid, came duly to the hands of said constable, and were by him afterwards, on the 23d day of May, 1849, returned and filed before said justice, with the return of said constable endorsed on each of said writs, that said defendant, the Bank of the State of Arkansas, had no goods or chattels whereof to levy the same; and on the 28th day of May, 1849, your orator caused to be made out by the said justice a duly certified transcript of each and all of the judgments aforesaid, and caused the same to be filed by the clerk of this court in his office, who thereupon, on the same day last aforesaid, entered each of said several judgments in the docket of this court for judgments and decrees, and noted therein the time of filing said transcripts respectively; and on the same day and year last aforesaid, your orator sued out and caused to be issued from the office of the clerk of this court a writ of fieri facias execution of and upon each, and of said docketed judgments duly issued, and tested, and signed by said clerk, and under the seal of this court, and bearing date the day and year last aforesaid, and returnable to the second day of the June term of this court in said year, running in the name of said State, and directed to the sheriff of said county, whereby, after reciting in each of said writs respectively the recovery of the judgments aforesaid, the issuance and return of executions thereon, the filing of said transcripts, and docketing of said judgments, as herein before stated, the said sheriff was thereby commanded that of the goods and chattels, lands and tenements, of said defendant, the Bank of the State of Arkansas, he cause to be made the amount of debt, damages, and cost in each of said executions respectively specified; which said several writs of execution afterwards, on the same day last aforesaid, came duly to the hands of said sheriff to be executed, and were by him afterwards, on the 5th day of June, 1849, returned and filed in the office of said clerk, with the return of said sheriff endorsed on each and all of said last mentioned writs of execution, that said defendant, the Bank of the State of Arkansas, had no property, goods or chattels, lands or tenements in his county whereof to satisfy the same or any part thereof. Your orator further represents, that the costs in each one of said judgments so adjudged to your orator, including the costs of docketing said judgments in the office of said clerk, and of issuing and returning said executions from this court, amount to the sum of $5 99 in each of the suits and causes aforesaid, and in the aggregate to the sum of $563 06, all of which matters and things respecting the recovery of said several judgments by your orator, and the issuance and return of executions therein, will more fully, at large, and particularly, appear in and by the record thereof remaining before the court, due on the law side thereof, duly certified transcript whereof your orator prays for leave to file here-

after, and which, when filed, he prays may be taken and considered as part of this bill, to be marked exhibit A, reference being thereunto had.

Your orator further represents that, in pursuance of the manifest policy and intention of said State, and of the combination between said State and said bank to hinder, delay, and defraud the holders of the notes *of the notes* of said bank, and among them your orator, from having or recovering any payment or satisfaction of their just and lawful demands against said bank, and to deprive such holders of all legal means and remedies for enforcing payment of said notes, and in effect to postpone them in favor of other creditors, when, by law and usage, and the charter of said bank, and the act of liquidation first above mentioned, the circulation of said bank was and ought to have been first paid and redeemed; said bank has, from time to time, purchased or received in payment of debts due and owing to her, from various persons, a large amount of real estate, but has falsely and fraudulently caused the title thereto to be taken and conveyed, and assured directly from said bank debtors to and in the name of said State, in some instances the consideration therefor purporting to have been by said State, and in other instances by said bank; when your orator in fact says, that in truth no part of such consideration was in any instance paid by said State, or out of the public funds, but on the contrary thereof, was paid by said bank, or out of her means and assets; and of such fraudulent purchases and conveyances which have come to the knowledge of your orator, he here enumerates the following, namely:

On the 12th day of March, 1847, James Lawson, as assignee in trust for Ebenezer Walters, by his deed of that date, conveyed to said State lots numbered 5 and 6 in block numbered 3, in the city of Little Rock, west of the Quapaw line, with their appurtenances, &c., in fee, for the consideration expressed of $2,000 00 received from said bank; and said Walters, by his deed of same date, conveyed and assured to said State the same premises and estate expressed to be for the same consideration, being in fact a debt due by said Walters to said bank, thereby cancelled and paid. And on the 12th day of September, 1848, his excellency, Thomas S. Drew, as governor of said State, by his deed of that date, under the seal of the State conveyed and assured to one Adelaide Krebbs the said lots numbered 5 and 6, in block 3 in said city of Little Rock, for the consideration expressed of $2,000 00, paid by said grantee, but to whom the same was paid is not therein stated; said deed purporting to be executed pursuant to act of assembly entitled "an act to direct the officers of the Bank of Arkansas to take title to real estate in the name of the State of Arkansas."

And on the 13th day of September, 1848, the said defendant, Charles J. Krebbs and said Adelaide, his wife, by their deed of that date, sold and conveyed said lots 5 and 6, in block 3, to one Charles P. Bertrand, by way of mortgage, to indemnify said Bertrand as the security of said defendant, Charles J. Krebbs, for the sum of $900, the same being in part for the consideration of the sale and conveyance as above stated from said State to said Adelaide Krebbs, and for which amount

said Charles J. Krebbs as principal, and said Charles P. Bertrand as his security, had executed their two notes under date of the 13th September, 1848, for the sum of $450, each payable to said Bank of the State of Arkansas in 1 and 2 years from the date thereof. And your orator avers, that in fact said sale of said lots was made by said bank to said Charles J. Krebbs, and the consideration therefor wholly received from him by said bank; and that so much of said consideration, being the sum of $900, as above stated, remains wholly due and unpaid, and that the same by the terms of the contract between said bank and said defendant, Charles J. Krebbs, is due and payable in specie. And your orator submits that either said lots and appurtenances, or the amount of the unpaid purchase money due therefor as aforesaid in lieu thereof, ought in equity to be subjected to the satisfaction of the judgments against said bank in favor of your orator, as he should elect.

On the 4th day of December, 1847, Albert Pike and Mary, his wife, by their deed of that date, conveyed to the State of Arkansas lots numbered 1, 2, 3, 10, 11, and 12, in block numbered 7, in said city of Little Rock, west of the Quapaw line, for the consideration of $3,500 paid by said bank therefor.

On the 2d day of March, 1848, John Wassall and Margaret, his wife, and David J. Baldwin and Sarah Ann, his wife, by their deed of that date, conveyed to said State the northwest quarter of section 10, the southwest quarter of section 10, the southwest quarter of section 3, the east half of the northeast quarter of section 9, the east half of the southeast quarter of section 9, and the east half of the southeast quarter of section 4, all in township 4 north, of range 9 west, containing together 720 acres, with the appurtenances, situate in Prairie county, for the consideration of $5,532, therein expressed to have been paid to them by said State. And on the 8th day of March, 1848, said Wassall and wife, by their deed, made a further conveyance and assurance to said State of and for the same lands and premises last mentioned, expressed to be for a like amount of consideration received in Arkansas bank notes; and your orator avers, that in fact both of said last mentioned deeds were upon the same identical consideration.

On the 12th day of June, 1848, William G. Thornton, by his deed of that date, conveyed to said State the west half of lots numbered 1, 2, and 3, in block numbered 81, in said city of Little Rock, west of the Quapaw line, and improvements therein and appurtenances, including the office and banking-house of said principal bank, for the consideration of $1,416, as therein expressed to have been paid to him by E. N. Conway, as auditor of public accounts for said State; said deed only purporting to convey all the title acquired by said William G. Thornton in or to said banking-house and lots by purchase thereof, made by him under execution on a judgment in favor of the United States against said bank, rendered in the circuit court of the United States for the Arkansas district, and also under execution at sheriff's sale, on a judgment in favor of Alfred Wallace against said bank, rendered in this honorable court on the law side thereof. And your orator

in fact says, that said real estate and premises last mentioned were sold and stricken off by said marshal at his sale aforesaid to said William G. Thornton, on the 10th day of April, 1848, at and for the sum of $750 bid therefor by said Thornton, and were accordingly conveyed in due form of law to him by said marshal; and that the same premises were sold and stricken off by said sheriff at his sale aforesaid to said William G. Thornton, on the 17th day of April, 1848, at and for the sum of $655 bid therefor by said William G. Thornton, and were accordingly conveyed to him in due form of law by said sheriff; that said William G. Thornton is the brother of Abner E. Thornton, esq., who, before said marshal's sale, was, and thence until and after said conveyance last mentioned to said State continued to be, the financial receiver of said bank; that the amounts paid by said William G. Thornton upon, and his bids at said marshal's and sheriff's sales for the purchase of said real estate and premises, were advanced to him for that purpose by said receiver out of the moneys of said bank, or loaned to him by said receiver, who reimbursed himself therefor out of the assets of said bank, so that said property was bid in for and with the money of said bank; that no consideration whatever was paid by said State, or any officer thereof, for her to said William G. Thornton for his conveyance aforesaid to said State, and that no consideration therefor was received by said William G. Thornton other than the moneys of said bank.

On the 16th day of October, 1848, Peter T. Crutchfield and Elizabeth Ann, his wife, by their deed of that date, conveyed to said State the south fractional half of the northwest fractional quarter north of Arkansas river, and the south residuary half of the northeast quarter north of Arkansas river, both in fractional section 36, in township 1 north, of range 11 west, the west half of section 26, in township 3 south, of range 10 west, and lots numbered 7, 8, and 9, in block numbered 40, in said city of Little Rock, being the east half of the half block on which said Crutchfield resided, for the consideration of $6,666 66, expressed to be in payment of so much of the indebtedness of said Crutchfield to the Bank of the State of Arkansas, and for which amount he was thereby declared to have credit, &c. And on the 21st day of April, 1848, the said State, by the deed of his excellency the governor thereof of that date, under the seal of State, after reciting and setting forth a certificate from John M. Ross, esq., as financial receiver of the Bank of the State of Arkansas, to the effect that said Peter T. Crutchfield had paid back to said bank the sum of $2,000, at which price said bank had received from him said lots 7, 8, and 9, in block 40, in said city, in payment of his indebtedness to her, &c., conveyed said lots to Frances Juliett Crutchfield for the consideration of the said sum of $2,000, such deed purporting to be so made by the request of the said Peter T. And on the same 21st day of April, 1848, said Peter T. Crutchfield and wife, by their deed of that date, conveyed to the State of Arkansas the southwest quarter of section 27, the west half of the northwest quarter of section 27, the southeast quarter of section 28, the south half of the northeast quarter of section 28, and the west frac-

said Charles J. Krebbs as principal, and said Charles P. Bertrand as his security, had executed their two notes under date of the 13th September, 1848, for the sum of $450, each payable to said Bank of the State of Arkansas in 1 and 2 years from the date thereof. And your orator avers, that in fact said sale of said lots was made by said bank to said Charles J. Krebbs, and the consideration therefor wholly received from him by said bank; and that so much of said consideration, being the sum of $900, as above stated, remains wholly due and unpaid, and that the same by the terms of the contract between said bank and said defendant, Charles J. Krebbs, is due and payable in specie. And your orator submits that either said lots and appurtenances, or the amount of the unpaid purchase money due therefor as aforesaid in lieu thereof, ought in equity to be subjected to the satisfaction of the judgments against said bank in favor of your orator, as he should elect.

On the 4th day of December, 1847, Albert Pike and Mary, his wife, by their deed of that date, conveyed to the State of Arkansas lots numbered 1, 2, 3, 10, 11, and 12, in block numbered 7, in said city of Little Rock, west of the Quapaw line, for the consideration of $3,500 paid by said bank therefor.

On the 2d day of March, 1848, John Wassall and Margaret, his wife, and David J. Baldwin and Sarah Ann, his wife, by their deed of that date, conveyed to said State the northwest quarter of section 10, the southwest quarter of section 10, the southwest quarter of section 3, the east half of the northeast quarter of section 9, the east half of the southeast quarter of section 9, and the east half of the southeast quarter of section 4, all in township 4 north, of range 9 west, containing together 720 acres, with the appurtenances, situate in Prairie county, for the consideration of $5,532, therein expressed to have been paid to them by said State. And on the 8th day of March, 1848, said Wassall and wife, by their deed, made a further conveyance and assurance to said State of and for the same lands and premises last mentioned, expressed to be for a like amount of consideration received in Arkansas bank notes; and your orator avers, that in fact both of said last mentioned deeds were upon the same identical consideration.

On the 12th day of June, 1848, William G. Thornton, by his deed of that date, conveyed to said State the west half of lots numbered 1, 2, and 3, in block numbered 81, in said city of Little Rock, west of the Quapaw line, and improvements therein and appurtenances, including the office and banking-house of said principal bank, for the consideration of $1,416, as therein expressed to have been paid to him by E. N. Conway, as auditor of public accounts for said State; said deed only purporting to convey all the title acquired by said William G. Thornton in or to said banking-house and lots by purchase thereof, made by him under execution on a judgment in favor of the United States against said bank, rendered in the circuit court of the United States for the Arkansas district, and also under execution at sheriff's sale, on a judgment in favor of Alfred Wallace against said bank, rendered in this honorable court on the law side thereof. And your orator

in fact says, that said real estate and premises last mentioned were sold and stricken off by said marshal at his sale aforesaid to said William G. Thornton, on the 10th day of April, 1848, at and for the sum of $750 bid therefor by said Thornton, and were accordingly conveyed in due form of law to him by said marshal; and that the same premises were sold and stricken off by said sheriff at his sale aforesaid to said William G. Thornton, on the 17th day of April, 1848, at and for the sum of $655 bid therefor by said William G. Thornton, and were accordingly conveyed to him in due form of law by said sheriff; that said William G. Thornton is the brother of Abner E. Thornton, esq., who, before said marshal's sale, was, and thence until and after said conveyance last mentioned to said State continued to be, the financial receiver of said bank; that the amounts paid by said William G. Thornton upon, and his bids at said marshal's and sheriff's sales for the purchase of said real estate and premises, were advanced to him for that purpose by said receiver out of the moneys of said bank, or loaned to him by said receiver, who reimbursed himself therefor out of the assets of said bank, so that said property was bid in for and with the money of said bank; that no consideration whatever was paid by said State, or any officer thereof, for her to said William G. Thornton for his conveyance aforesaid to said State, and that no consideration therefor was received by said William G. Thornton other than the moneys of said bank.

On the 16th day of October, 1848, Peter T. Crutchfield and Elizabeth Ann, his wife, by their deed of that date, conveyed to said State the south fractional half of the northwest fractional quarter north of Arkansas river, and the south residuary half of the northeast quarter north of Arkansas river, both in fractional section 36, in township 1 north, of range 11 west, the west half of section 26, in township 3 south, of range 10 west, and lots numbered 7, 8, and 9, in block numbered 40, in said city of Little Rock, being the east half of the half block on which said Crutchfield resided, for the consideration of $6,666 66, expressed to be in payment of so much of the indebtedness of said Crutchfield to the Bank of the State of Arkansas, and for which amount he was thereby declared to have credit, &c. And on the 21st day of April, 1848, the said State, by the deed of his excellency the governor thereof of that date, under the seal of State, after reciting and setting forth a certificate from John M. Ross, esq., as financial receiver of the Bank of the State of Arkansas, to the effect that said Peter T. Crutchfield had paid back to said bank the sum of $2,000, at which price said bank had received from him said lots 7, 8, and 9, in block 40, in said city, in payment of his indebtedness to her, &c., conveyed said lots to Frances Juliett Crutchfield for the consideration of the said sum of $2,000, such deed purporting to be so made by the request of the said Peter T. And on the same 21st day of April, 1848, said Peter T. Crutchfield and wife, by their deed of that date, conveyed to the State of Arkansas the southwest quarter of section 27, the west half of the northwest quarter of section 27, the southeast quarter of section 28, the south half of the northeast quarter of section 28, and the west frac-

tional half of the northwest fractional quarter of fractional section 34, all in township one north, of range 14 west, situate in Pulaski county, containing altogether 525 acres of land, and expressed to be for the consideration of $3,400 paid to them by the officers of said bank in behalf of the State.

On the 4th day of August, A. D. 1848, Luther Chase and Rosina, his wife, by their deed of that date, conveyed to the State of Arkansas lots numbered 1, 2, 3, 4, 5, 6, 7, 8, and 9, in block numbered 59, in said city of Little Rock, for the consideration expressed of $1,800, purporting to be paid by said grantee.

On the 2d day of November, 1848, said Albert Pike and wife, by their deed of that date conveyed to said State lots numbered 10, 11, and 12, in block numbered 101, in said city of Little Rock, west of the Quapaw line, for the consideration expressed of $3,700 00.

On the 10th day of February, 1849, Elias N. Conway, by his deed of that date, conveyed to said State lots numbered 1, 2, and 3, in fractional block 4, in Rectortown, adjoining said city of Little Rock, for the consideration expressed of $300 00 Arkansas Bank paper.

On the 13th day of March, 1849, Lorenzo Gibson and Louisa C., his wife, and James Lawson and Absalom Fowler, by their deed of that date conveyed to said State the southwest quarter of section 33, and the northeast quarter of the southeast quarter of section 32 in township 2 north, of range 12 west, containing 200 acres, expressed to be for and in consideration that said Bank of the State of Arkansas had agreed to, and did thereby, release a certain judgment in her favor, rendered in this court on the 12th day of November, 1846, against said Gibson, Lawson, and Fowler, for $4,184 00, with interest thereon at 10 per cent. per annum, from the 8th day of December, 1843, until paid.

On the 5th day of April, 1849, Samuel D. Blackburn and Elizabeth K., his wife, by their deed of that date, conveyed to said State, the east half of the northwest quarter containing 80 acres, the northeast fractional quarter, south of Arkansas river, containing $87\frac{75}{100}$ acres, the northeast quarter of the southeast quarter, containing 40 acres, and the north half of the southeast quarter *of the southeast quarter* containing 20 acres, all in section 3, in township 3 north, of range 14 west, with improvements, &c., expressed to be for the consideration that the Bank of the State of Arkansas had agreed to, and did, release said Samuel D. from a debt he owed to said bank, amounting to the sum of $2,100 00.

On the 11th day of June, 1846, Thomas S. James, by his deed of that date conveyed to said State the northeast quarter and the east half of the northwest quarter of section 27, in township 6 south, of range 9 west, containing 240 acres, expressed to be in consideration of $870 00 Arkansas money.

Your orator further represents that said Bank of the State of Arkansas has purchased and taken in payment of debts due to her from various persons other real estate, as he is informed and believes to a large amount, and fraudulently caused the same to be conveyed to said State,

but the description of the lands so conveyed and names of the persons conveying the same are unknown to your orator, and cannot be ascertained without the aid of a discovery from said bank. And he further represents that said defendant, the Bank of the State of Arkansas, has in her possession, or in the hands, possession, and custody for said bank and belonging to her, of her officers, James M. Ross, the financial, and David W. Carroll, the attorney of said bank, or one of them, a large amount of the bills and notes for circulation issued by said Real Estate Bank of the State of Arkansas, but the amount and identity of such bills and notes are unknown to your orator and cannot be ascertained without a discovery of the same and the production thereof by said defendant, the Bank of the State of Arkansas, or her officers aforesaid.

And he further represents, that said defendant, the Bank of the State of Arkansas, has due and owing to her, from various persons, a large amount of debts, which, as your orator is advised, are subject to be paid in equal annual instalments, from and after the passage of said act of liquidation first mentioned, and payable in the bills and notes of either of said banks, or with any of the bonds of said State, issued for capital stock of either of said banks, and therefore of an uncertain and contingent value; but the names of the persons owing such debts, the several amounts thereof due by such persons respectively, how evidenced and when due, or to become due and payable, are unknown to your orator, nor can the same be ascertained without the aid of a discovery from said defendant, the Bank of the State of Arkansas, or her officers aforesaid.

And your orator further represents, that the judgments aforesaid in his favor against said defendant, the Bank of the State of Arkansas, remain wholly unsatisfied, and said defendants, although often requested thereto by your orator, have refused and do utterly neglect and refuse to pay the same in whole or in part, and that by means of the fraudulent acts and doings of said defendant, the Bank of the State of Arkansas and said State, your orator is deprived of all legal remedy to enforce the satisfaction of the same; in tender consideration whereof, and for that your orator is remediless in the premises at law, and relievable only by the aid and interposition of this honorable court; to the end thereof, and to the end that said defendants may, under their respective corporal oaths, full, true, direct, and perfect answer make to all and singular the allegations herein before contained, as fully and minutely as though the same were here again repeated item by item, and they thereunto particularly interrogated; and more especially that said defendants may set forth and discover what real estate or other property, with a full and accurate description thereof, other than that herein before enumerated and described, has been conveyed to said State by any debtor of said Bank of the State of Arkansas, or in payment of debts due to said bank; and that they may also set forth and discover what amount of the bills and notes issued by said Real Estate Bank is now in the possession or custody of said Bank of the State of Arkansas, or either of her officers aforesaid, and belonging to her, and that may be

produced and brought into court here, subject to its decree in the premises; and that they may also set forth and discover what debts, if any, are due and owing by any person or persons to said Bank of the State of Arkansas, and the several and respective amounts thereof, by whom the same are owing, how evidenced, and when due or to become due; and that by decree of this honorable court the said Charles J. Krebbs may be required to pay to your orator, in satisfaction of so much of your orator's judgments aforesaid against said bank, the amount so as aforesaid due or to become due from said Charles J. Krebbs to said bank in specie; and that all the real estate as aforesaid, and all such as may be discovered as aforesaid, may be sold by a commission of this court, to be appointed for that purpose, as the property of said bank, free and discharged of any false and pretended right or claim thereto on the part of said State, to satisfy your orator's said judgment, and subjected to the payment thereof; and that all such bills and notes issued by said Real Estate, and belonging to said State bank, that may be so discovered and produced, may also be subjected and condemned to the payment of your orator's said judgments, and by such commissioner sold to satisfy the same. And that by such decree, if it should become necessary for the satisfaction of your orator's said judgments, such persons so ascertained and discovered to be indebted to said Bank of the State of Arkansas, (and *whom* when so discovered and ascertained, your orator will make defendants hereto, with apt and proper words to charge them in the premises to that end,) may be required to pay to your orator in further satisfaction and discharge of his judgments, the amount or value thereof that may be due or to become due by them respectively to said Bank of the State of Arkansas. And that your orator may have such other and further relief in the premises as the nature of his case may require. Your orator prays process of subpœna, &c., against said defendants, requiring them to appear, &c., and answer your orator concerning the premises; and your orator, &c.

WATKINS & CURRAN,
Sol. for complainant.

Spas. to Pulaski.
W. & C.

Filed, and subpœna issued to Pulaski county, this 13th day of August, A. D. 1849.

GORDON N. PEAY, *Clerk.*

STATE OF ARKANSAS,
County of Pulaski, ss.

The State of Arkansas, to the sheriff of the county of Pulaski, greeting:

You are hereby commanded to summon the Bank of the State of Arkansas, John M. Ross, financial receiver of said bank, David W. Carroll, attorney of said bank, the State of Arkansas, and Charles J.

Krebbs, if they be found within your bailiwick, to appear before the judge of our circuit court of Pulaski county, in chancery sitting, at the court-house in the county aforesaid, on the first day of our next December term, at a court to be holden on the first Monday of December next, then and there to answer a bill in chancery, filed and exhibited against them in said court by James M. Curran, and this they shall in no wise omit at their peril; and that you make due return of this writ to our said court.

In testimony whereof I have hereunto set my hand, as clerk of said circuit court, and affixed the seal of office, this 13th day of [L. S.] August, 1849, and of the independence of the United States the 74th year.

GORDON N. PEAY, *Clerk.*

I do hereby certify, that I executed the within writ of summons on the 13th day of August, 1849, in the county of Pulaski, State of Arkansas, by delivering a copy of the same to each of the within named, to wit, the Bank of the State of Arkansas, John M. Ross, financial receiver of said bank, David W. Carroll, attorney of said bank, the State of Arkansas, and Charles J. Krebbs.

BEN. F. DANLEY, *Sheriff*,
Per WM. H. CAUSIN, *D. S.*

Service,	$2 50
Copies,	1 50
Mileage,	30
	$4 30

Returned and filed, 13th August, 1849.

GORDON N. PEAY, *Clerk.*

Exhibit A.

STATE OF ARKANSAS,
County of Pulaski, to wit.

At a monthly court holden before John C. Peay, esq., one of the justices of the peace for Big Rock township, in said county, at my office, in the city of Little Rock, in said township, on the second Monday of May, (it being the 12th day of said month,) A. D. 1849, the following proceedings were had, to wit:

JAMES M. CURRAN, plaintiff,
vs.
THE BANK OF THE STATE OF ARKANSAS, defendant. } Case No. 1.

Claim filed 30th April, 1849, being the notes of said bank, twenty in number, amounting to one hundred dollars, sued on, and summons issued same day, returnable to this day, and which is now returned

duly executed; and on this day the said plaintiff appeared, by Watkins & Curran, attorneys, and the said defendant, by her attorney, D. W. Carroll, also appeared; and the said defendant filed her objection, in writing, to the justice here sitting in this case, which objection, after argument, is overruled by the justice.

And thereupon this cause is submitted to the court here for trial, and the court having inspected the notes sued on, and heard the evidence adduced, and the arguments of counsel, and being sufficiently advised in the premises, it is therefore considered by the justice that the said plaintiff do have and recover, of and from the said defendant, as well the sum of one hundred dollars aforesaid for his debt, as also the further sum of fifty-seven dollars for his damages by him sustained by reason of the detention thereof, besides all his costs in this behalf expended.

May 19th, 1849, execution issued and delivered to Charles Alyff, constable of Big Rock township.

JNO. C. PEAY, *J. P.*

Debt - -	$100 00
Damages -	57 00
Constable fees	37½
Justice's fees -	75

Execution returned and filed May 23, 1849. No property found.

JNO. *P.* PEAY, *J. P.*

Copy of notes sued, filed 30th April, 1849.

$5. A, No. 422.

The branch of the Bank of the State of Arkansas, at Fayetteville, will pay five dollars on demand to A. Wallace, or bearer. Fayetteville, January 8, 1839.

W. L. WILSON, *Pres't.*

W. McK. BALL, *Cash'r.*

$5. D, No. 1342.

The branch of the Bank of the State of Arkansas, at Fayetteville, will pay five dollars on demand to A. Wallace, or bearer. Fayetteville, January 8, 1839.

W. L. WILSON, *Pres't.*

W. McK. BALL, *Cash'r.*

$5. B, No. 343.

Twelve months after date, the branch of the Bank of the State of Arkansas, at Fayetteville, will pay to B. H. Smithson, or order, five dollars, without interest. Fayetteville, April 6, 1838.

JACOB WALKER, *Pres't.*

W. McK. BALL, *Cash'r.*

$5. A, No. 775.

The branch of the Bank of the State of Arkansas, at Fayetteville, will pay five dollars on demand to A. Wallace, or bearer. Fayetteville, January 8, 1839. W. L. WILSON, *Pres't.*

W. McK. BALL, *Cash'r.*

$5. A, No. 271.

Twelve months after date, the branch of the Bank of the State of Arkansas, at Fayetteville, will pay to M. Wright, or order, five dollars, without interest. Fayetteville, November 1, 1838.

JACOB W. WALKER, *Pres't.*

W. McK. BALL, *Cash'r.*

(Endorsed) M. WRIGHT.

$5. D, No. 80.

The branch of the Bank of the State of Arkansas, at Fayetteville, will pay five dollars on demand, after twelve months, to A. Wallace, or bearer. Fayetteville, February 2, 1838.

JACOB W. WALKER, *Pres't.*

W. McK. BALL, *Cash'r.*

$5. No. 518.

Twelve months after date, the branch of the Bank of the State of Arkansas, at Fayetteville, will pay to M. Wright, or order, five dollars, without interest. Fayetteville, November 1, 1838.

JACOB W. WALKER, *Pres't.*

W. McK. BALL, *Cash'r.*

(Endorsed) M. WRIGHT.

$5. A, No. 93.

Twelve months after date, the branch of the Bank of the State of Arkansas, at Fayetteville, will pay to L. Brodie, or order, five dollars. Fayetteville, October 1, 1838.

JACOB W. WALKER, *Pres't.*

W. McK. BALL, *Cash'r.*

(Endorsed) L. BRODIE.

$5. A, No. 187.

The branch of the Bank of the State of Arkansas, at Fayetteville, will pay five dollars on demand to A. Wallace, or bearer. Fayetteville, January 8, 1839.

W. L. WILSON, *Pres't.*

W. McK. BALL, *Cash'r.*

$5. No. 3329. ARKANSAS, Jan'y 17, 1839.

The branch of the Bank of the State of Arkansas, at Arkansas, will pay W. A. Doherty, or bearer, on demand, five dollars.

T. FARRELLY, *Pres't.*

LUTHER CHASE, *Cash'r.*

$5. A, No. 3148. ARKANSAS, Jan'y 17, 1839.

The branch of the Bank of the State of Arkansas, at Arkansas, will pay W. A. Doherty, or bearer, on demand, five dollars.

T. FARRELLY, *Pres't.*

LUTHER CHASE, *Cash'r.*

$5. A, No. 1833.

The branch of the Bank of the State of Arkansas, at Arkansas, will pay five dollars, on demand, to W. A. Doherty, or bearer. Arkansas, January 17, 1839.

T. FARRELLY, *Pres't.*

LUTHER CHASE, *Cash'r.*

$5. B, No. 3046. ARKANSAS, Jan'y 17, 1839.

The branch of the Bank of the State of Arkansas, at Arkansas, will pay W. A. Doherty, or bearer, on demand, five dollars.

T. FARRELLY, *Pres't.*

LUTHER CHASE, *Cash'r.*

$. B, 3043. ARKANSAS, Jan'y 17, 1839.

The branch of the Bank of the State of Arkansas, at Arkansas, will pay W. A. Doherty, or bearer, on demand, five dollars.

T. FARRELLY, *Pres't.*

LUTHER CHASE, *Cash'r.*

$5. No. 1938.

The branch of the Bank of the State of Arkansas, at Arkansas, will pay five dollars, on demand, to W. A. Doherty, or bearer. Arkansas, January 17, 1839.

T. FARRELLY, *Pres't.*

LUTHER CHASE, *Cash'r.*

$ A, No. 1132.

The branch of the Bank of the State of Arkansas will pay five dollars, on demand, to W. A. Doherty, or bearer. Arkansas, January 17, 1839.

T. FARRELLY, *Pres't.*

LUTHER CHASE, *Cash'r.*

$5. B, No. 3117. ARKANSAS, Jan'y 17, 1839.

The branch of the Bank of the State of Arkansas, at Arkansas, will pay W. A. Doherty, or bearer, on demand, five dollars.

T. FARRELLY, *Pres't.*

LUTHER CHASE, *Cash'r.*

$5. B, No. 16.

The branch of the Bank of the State of Arkansas, at Arkansas, will

pay five dollars, on demand, to W. A. Doherty, or bearer. Arkansas, January 3, 1839. T. FARRELLY, *Pres't.*
LUTHER CHASE, *Cash'r.*

$5. A, No. 341.

The branch of the Bank of the State of Arkansas, at Arkansas, will pay five dollars, on demand, to W. A. Doherty, or bearer. Arkansas, January 3, 1839. T. FARRELLY, *Pres't.*
LUTHER CHASE, *Cash'r.*

$5. B, No. 62.

The branch of the Bank of the State of Arkansas, at Arkansas, will pay five dollars, on demand, to W. A. Doherty, or bearer. Arkansas, January 3, 1839. T. FARRELLY, *Pres't.*
LUTHER CHASE, *Cash'r.*

Copy of summons.

COUNTY OF PULASKI, *ss.*

The State of Arkansas, to the constable of Big Rock township, in Pulaski county, greeting:

You are hereby commanded to summon the Bank of the State of Arkansas to appear before the undersigned, one of the justices of the peace of Big Rock township, in the county of Pulaski, on the 12th day of May, 1849, at 10 o'clock in the forenoon, at my office, in Little Rock, in the same township, to answer the complaint of James M. Curran.

Given under my hand, this 30th day of April, 1849.
JNO. C. PEAY, *J. P.*

Case No. 1.—*Constable's return.*

The within writ came to my hands on the first day of May, A. D. 1849, and I executed the same, by delivering a true copy thereof to John M. Ross, esq., as financial receiver of the Bank of the State of Arkansas, at the banking house of said bank in the city of Little Rock.

Done in Big Rock township, this 1st day of May, A. D. 1849.
C. ALYFF,
Constable of Big Rock township.

Const. fee—service, 37½ c.

Objection of defendant.

JAMES M. CURRAN, plaintiff,
vs.
The Bank of the State of Arkansas, defendant.

The said defendant comes and objects to the authority of John C.

Peay, esq., the supposed justice of the peace, before whom she is summoned to appear, and gives as a reason for her objection that the said John C. Peay, esquire, is now a deputy sheriff under Benjamin F. Danley, esq., sheriff of Pulaski county, State of Arkansas, and that by exercising the said office of deputy sheriff he is not authorized to exercise the office of justice of the peace. Whereupon the said defendant asks that this objection be placed on the record of this cause, and that said supposed justice refrain from any further proceedings in this case.

D. W. CARROLL,
Attorney for the Bank.

The above objections, as above set forth, is made and is to refer to the cases from No. 2 to No. 94, inclusively, now depending against the bank before the said supposed justice.

D. W. CARROLL, *Attorney.*

Filed this 12th day of May, 1849.

J. C. PEAY, *J. P.*

STATE OF ARKANSAS,
County of Pulaski, ss.

Case No. 1.

The State of Arkansas, to the constable of the township of Big Rock, in the county of Pulaski, greeting:

Whereas James M. Curran, on the 12th day of May, 1849, obtained judgment before the undersigned, a justice of the peace in and for the township of Big Rock, in the county of Pulaski, against the Bank of the State of Arkansas, for one hundred dollars debt, and fifty-seven dollars for his damages, and also one 37½ dollars for costs, you are therefore commanded to levy the same of the goods and chattels of the said Bank according to law. You are further commanded to return this writ to the undersigned justice at my office next monthly court, to be holden on the second Saturday in June, 1849.

Given under my hand this 19th day of May, 1849.

JNO. C. PEAY, *J. P.*

Endorsed.

The within writ came to my hands on the 19th day of May, 1849, and I certify that the defendant within named has no goods or chattels within my township to levy the same. Done in Big Rock township, this 22d day of May, 1849.

Constable's fee, return 50 cents.

C. ALYFF,
Constable of Big Rock Township.

Returned and filed, May 23d, 1849.

JNO. C. PEAY, *J. P.*

STATE OF ARKANSAS,
County of Pulaski, to wit:

I hereby certify that the annexed, within, and foregoing is a true, full, and complete transcript of the record and proceedings had before me, one of the justices of the peace for Big Rock township, in said county, in the case therein mentioned, as the same appears of record in my office.

Given under my hand at office in said township this 28th day of May, 1849.

JNO. C. PEAY, *J. P.*

Fee for transcript - - - -	$1 00
Total J. P's cost - - - -	1 00
Total const. cost - - - -	87½

Filed in my office 28th May, 1849.

GORDON N. PEAY,
Clerk.

Extract from judgment, docket B.

Names of parties.	Date of judgment.	Debts, damages, interest, and cost.	Amount.	[Remarks.]
James M. Curran vs. The Bank of the State of Arkansas. Judgment by justice of the peace.	May 12th, 1849.	Debt..... Damages..... Cost.....	$100 00 57 00 2 87½	Transcript, filed 28th May, A. D. 1849.

STATE OF ARKANSAS,
County of Pulaski, ss.

The State of Arkansas, to the sheriff of the county of Pulaski, greeting:

Whereas James M. Curran, on the 28th day of May, A. D. 1849, did file, in the office of the clerk of the circuit court of the county of Pulaski, a certified copy of a certain judgment, rendered by John C. Peay, esq., a justice of the peace in and for the township of Big Rock, in the said county of Pulaski, whereby it appears that said justice of the peace did, on the *the* 12th day of May, 1849, render judgment in his favor against the Bank of the State of Arkansas for the sum of one hundred dollars debt, together with the sum of fifty-seven dollars damages, besides all his costs, which costs amount to the sum of two dollars and eighty-seven cents; and that on the 19th day of May, 1849, an execution was issued thereon, and that the said execution has been returned that the defendant has no goods or chattels whereof to levy the same. And whereas, the clerk of said circuit did, at the time of

filing such transcript as aforesaid, enter such judgment in the docket of said circuit court for judgments and decrees, in the manner provided by law, to the end that the same might have the like effect, and be carried into execution in the same manner as the judgments of such circuit court.

You are therefore commanded, that of the goods and chattels, lands and tenements, of the said Bank of the State of Arkansas you cause to be made the debt, damages, and costs aforesaid, together with the sum of two dollars and six cents additional costs, and have the said debt, damages, and costs, and additional costs, before our said circuit court, on the second day of our June term, A. D. 1849, and that you then and there certify how you have executed this writ.

In testimony whereof, I, Gordon N. Peay, clerk of the said court, have hereunto set my hand and affixed the seal of said court, [L. S.] this 28th day of May, A. D. 1849.

GORDON N. PEAY,
Clerk.

(*Endorsed.*)

I, Benjamin F. Danley, sheriff of Pulaski county, do hereby certify and return, that this writ of execution came to my hands on the 28th day of May, 1849, and that the within named bank hath not any goods, chattels, lands, or tenements, or other property, within my county, whereof I can cause to be made or levied any part of the moneys within specified. Wherefore this execution is returned wholly unsatisfied.

Done in Pulaski county, this 5th day of June, A. D. 1849.

B. F. DANLEY,
Sheriff of Pulaski county.

Sheriff's fees.

For return nulla bona $100; No. 126, James M. Curran vs. State Bank; fi. fa., judgment, 12th May, 1849, to June term, A. D. 1849, debt $100; damages $57 00; costs $4 93.

Attest. GORDON N. PEAY,
Clerk.

Fee bill.

Clerk G. N. Peay, $2 06; Justice J. C. Peay, $2 00; Constable C. Alyff, 87 cents—$4 93. Sheriff's fees for return nulla bona on this writ $1 00; Clerk G. N. Peay, filing this return, 6 cts.; total $5 99.

THE STATE OF ARKANSAS,
County of Pulaski, ss.

I, Gordon N. Peay, clerk of the circuit court for said county, do

hereby certify, that the annexed and foregoing eleven pages contain a true transcript from the original filed in my office by John C. Peay, J. P., in the case therein mentioned; together with the abstract from the judgment docket of my office of the judgment mentioned in said transcript, and the execution and sheriff's return, and the endorsements thereon, as the same remains in my office.

In testimony whereof, I hereunto set my hand as such clerk, and affix the seal of said circuit court, this 5th day of February, A. D. 1850.

[L. S.]

GORDON N. PEAY,
Clerk.

Filed 6th February, A. D. 1850.

GORDON N. PEAY,
Clerk.

Proceedings had 3d December, 1840.

JAMES M. CURRAN, complainant,
vs.
THE BANK OF THE STATE OF ARKANSAS, and others, defendants.

In chancery.

This day comes the defendant, the Bank, by solicitor, and files her demurrer to the said complainant's bill.

Demurrer of bank.

JAMES M. CURRAN, complainant,
vs.
THE BANK OF THE STATE OF ARKANSAS, defendants.

In the Pulaski circuit court on the chancery side thereof, A. D. 1849.

The demurrer of the Bank of the State of Arkansas, John M. Ross, financial receiver, and David W. Carroll, attorney thereof, three of the defendants to the bill of complaint of James M. Curran, complainant, exhibited in said cause.

These defendants, by protestation, not acknowledging or confessing all or any of the matters and things in the said complainant's bill contained to be true, in such manner and form as the same are therein and thereby set forth, do demur thereto, and for cause of demurrer say, that the said bill doth not contain sufficient matter of equity on which this honorable court can ground any decree in favor of the said complainant, or give the said complainant any relief against the defendants; nor has the complainant made such a case as entitles him in a court of equity to any discovery from these defendants, respectively, or any, or either of them; wherefore, and for divers other good causes of demur-

rer in the said bill, these defendants do demur thereto, and they pray the judgment of this honorable court whether they shall be compelled to make any further and other answer to the said bill; and they pray to be dismissed from hence with their reasonable costs in this behalf sustained.

D. W. CARROLL,
S. H. HEMPSTEAD,
Solicitors for defendants.

Filed, 3d December, 1849.

GORDON N. PEAY, *Clerk.*

Proceedings had 10*th December, A. D.* 1849.

JAMES M. CURRAN, complainant,
vs.
THE BANK of the State of Arkansas, Charles J. Krebs, et al., defendants.

In chancery.

This day comes the defendant, Charles J. Krebbs, by attorney, and files his demurrer to said complainant's bill.

Krebbs's demurrer.

In Pulaski circuit court, in chancery, at December term thereof, A. D. 1849.

JAMES M. CURRAN, complainant,
vs.
THE BANK of the State of Arkansas, J. M. Ross, D. W. Carroll, the State of Arkansas, and C. J. Krebbs, defendants.

Bill in chancery.

And this defendant, Charles J. Krebbs, by solicitor, comes and says, that the bill of complaint herein is not sufficient in law, and therefore he demurs thereto, and for cause of demurrer assigns:

1st. That said bill seeks to compel this defendant to pay money to the complainant by a process similar to a garnishment, when by the face of said bill it appears that by law no garnisheeing process can be resorted to by any creditor of said bank against any debtor to said bank.

2d. That said bill is in other respects uncertain, insufficient, and irregular, &c. Wherefore this defendant prays judgment, if he be compelled further to answer said bill of complaint.

BALDWIN.

Filed 10th December, 1849.

GORDON N. PEAY, *Clerk.*

Proceedings had 23d January, 1850.

JAMES M. CURRAN, complainant,
vs.
THE BANK of the State of Arkansas, the State of Arkansas, et al., defendants. } In chancery.

This day comes the State of Arkansas, by John J. Clendenin, esq., attorney general, and files her demurrer to the complainant's bill.

State's demurrer.

In the Pulaski circuit court, on the chancery side thereof, December term, 1849.

JAMES M. CURRAN, complainant,
vs.
THE BANK of the State of Arkansas, the State of Arkansas, et al., defendants.

The demurrer of the State of Arkansas, one of said defendants to the bill of complaint of James M. Curran, complainant, exhibited in said cause. The defendant, the State of Arkansas, by her attorney general, by protestation, not acknowledging or confessing all or any of the matters and things in the said complainant's bill to be true, in such manner and form as the same are therein and thereby set forth, do demur thereto, and for cause of demurrer, say, that the said bill doth not contain sufficient matter of equity on which this honorable court can ground any decree in favor of said complainant, or give the said complainant any relief against the defendants, nor has the complainant made such a case as entitles him in a court of equity to any discovery from this defendant; wherefore, and for divers other good causes of demurrer appearing in the said bill, this defendant doth demur thereto, and prays the judgment of this court whether she shall be compelled to make any further and other answer to the said bill; and she prays to be dismissed from hence with her reasonable costs in this behalf expended.

JOHN J. CLENDENIN,
Attorney General.

Filed, 23d January, 1850

GORDON N. PEAY, *Clerk.*

Proceedings had 6th February, 1850.

JAMES M. CURRAN, complainant,
vs.
THE BANK of the State of Arkansas, the State of Arkansas, and Charles J. Krebbs, et als., defendants.

In chancery.

And now, on this day, comes the parties aforesaid, by their respective solicitors, and by consent of parties now here expressed, the said

complainant exhibits and files here in open court a certified transcript of the judgment, No. 1, obtained by said complainant against the Bank of the State of Arkansas, to be taken and considered as and for and in lieu of the several exhibits, being judgments similar in terms and import obtained by said complainant against said bank, numbered from one to ninety-four, both inclusive, as mentioned and described in said bill of complaint, and with like effect, as if all of said transcripts had been duly exhibited. And it is here understood, that the object of this agreement is to save costs of procuring such exhibits to either of the parties to this suit; and that all rights are reserved to said complainant and to defendants, if any advantage they might have by the filing of all said exhibits in full in like manner as if the same had all been filed.

For exhibit A, see page 23.

Proceedings had 23d February, 1850.

JAMES M. CURRAN, complainant,
vs.
THE BANK of the State of Arkansas, John M. Ross, financial receiver, and David W. Carroll, attorney of said bank, the State of Arkansas, and Charles J. Krebbs, defendants.

In chancery.

This cause came on to be heard upon the several demurrers to said bill, interposed by said defendants, the Bank of the State of Arkansas, the State of Arkansas, and Charles J. Krebbs, and was heard and argued by counsel, on consideration whereof it is the opinion of the court here that said bill of complaint, and the matters therein set forth and contained, are good and sufficient to entitle the said complainant to the relief thereby sought. It is therefore ordered, adjudged, and decreed by the court here that said demurrers be, and the same are hereby, overruled.

And said defendants not desiring to plead or answer further to said bill, but electing to rest upon their said several demurrers thereto, and on motion of said complainant, and it appearing to the court here that the said defendants, John M. Ross, financial receiver, and David W. Carroll, attorney of said defendant, the Bank of the State of Arkansas, although severally and duly and in due time served with process in this behalf, have wholly failed to appear and demur, plead or answer, said bill within the time required by law; it is ordered, adjudged, and decreed by the court here, that said bill of complaint be against them taken for confessed, and that a decree final be made and rendered herein. Whereupon, and on inspection of said bill, it appears to the court here that, on the twelfth day of May, A. D. one thousand eight hundred and forty-nine, by the consideration and judgment of John C. Peay, esq., one of the justices of the peace for Big Rock township, in

said county of Pulaski, holden at his office in the city of Little Rock, in said township, the said complainant recovered judgment against said defendant, the Bank of the State of Arkansas, in ninety-four suits, before them instituted and there pending, brought by said complainant against said bank before the said justice, numbered from one to ninety-four, both inclusive, for his debt, damages, and costs in each one of said several suits, amounting in the aggregate to the sum of nine thousand three hundred and fifty-five dollars for his debt, and five thousand three hundred and fourteen dollars and twenty-five cents for his damages, less a remittitur for the sum of eight dollars, entered by said complainant before said justice of and upon one of said judgments, being in case numbered eighty-nine; that executions of and upon each and all of said judgments were duly issued by said justice, directed to the constable of said township wherein said bank is located, and were by him returned unsatisfied; and that said bank had no goods or chattels whereof to levy the same; that afterwards the said complainant caused to be filed in the office of the clerk of said county duly certified transcripts of each and all of the judgments aforesaid, and the same were severally entered by said clerk in the docket of this court for judgments and decrees as prescribed by law; that afterwards executions were duly issued by said clerk of and upon each and all of said docketed judgments, directed to the sheriff of said county, and were by him afterwards, and before the institution of this suit, duly returned and endorsed wholly unsatisfied; and that said defendant, the Bank of the State of Arkansas, had no property, goods, chattels, lands, or tenements, whereof to levy the same; that the costs of each of said several suits were taxed to the sum of five dollars and ninety-nine cents, and amount in the aggregate to the sum of five hundred and sixty-three dollars and six cents; and that said debt, damages, and costs remain wholly unpaid and unsatisfied to said complainant.

And the said complainant admitting here, in open court, that the said defendant, Charles J. Krebbs, on the 27th day of July, A. D. 1844, and before the institution of this suit, paid to the said defendant, the Bank of the State of Arkansas, the sum of four hundred and seventy-three dollars and sixty-two cents in specie, in full discharge of the note of said Krebbs as principal, and Charles P. Bertrand as security to said bank in said bill mentioned, dated on the thirteenth day of September, A. D. 1848, due in one year from date, for four hundred and fifty dollars, and of the interest accrued thereon from date thereof; it further appearing to the court that the said defendant, Charles J. Krebs, is indebted to said defendant, the Bank of the State of Arkansas, in the sum of four hundred and fifty dollars, payable, according to the terms of the contract between them, in specie, and for which Charles J. Krebs as principal, and Charles P. Bertrand as his security, on the thirteenth day of September, A. D. 1848, executed their note of that date for the said sum of four hundred and fifty dollars, payable to said bank in specie, and due in two years from the date thereof, and which said last mentioned note remains wholly unpaid.

And it further appearing to the court that, before the institution of this suit, at various times, the said defendant, the Bank of the State of Arkansas, has purchased, and taken in payment of debts due to her from various persons, and paid for her out of her own money and means, the following described lots, tracts, or parcels of lands and premises, the legal title whereof has been caused by said bank to be conveyed to said defendant, the State of Arkansas, by and from the several persons from whom said bank so purchased the same, and which are in equity the property of said bank, and subject to the payment of debts due by her, namely: Lots numbered 1, 2, 3, 10, 11, and 12, in block numbered 7, in the city of Little Rock, west of the Quapaw line; the northwest quarter of section 10, *the southwest quarter of section* 10, the southwest quarter of section 3, the east half of the northeast quarter of section 9, the east half of the southeast quarter of section 9, and the east half of the southeast quarter of section 4, all in township 4 north, of range 9 west, containing together 720, situate in Prairie county; the west half of lots numbered one, 1, 2, and 3, in block numbered 81, in said city of Little Rock, west of the Quapaw line, and improvements and appurtenances, including the office and banking house of said bank; the south fractional half of the northwest fractional quarter, (north of the Arkansas river,) and the south residuary half of the northeast quarter, north of Arkansas river, both in fractional section 36, in township 1 north, of range 11 west; the west half of section 26, in township 3 south, of range 10 west; the southwest quarter of section 27, the west half of the northwest quarter of section 27, the southeast quarter of section 28, the south half of the northeast quarter of section 28, and the west fractional half of the northwest fractional quarter of fractional section 34, all in township one north, of range 14 west, situate in Pulaski county; lots numbered 1, 2, 3, 4, 5, 6, 7, 8, and 9, in block numbered 59, in said city of Little Rock; lots numbered 10, 11, and 12, in block numbered 101, in said city of Little Rock, west of the Quapaw line; lots numbered 1, 2, and 3, in fractional block numbered 4, in Rector town, adjoining said city of Little Rock; the southwest quarter of section 33 and the northeast quarter of the southeast quarter of section 32, in township 2 north, of range 12 west, containing 200 acres; the east half of the northwest quarter, containing 80 acres; the northeast fractional quarter, south of Arkansas river, containing $87\frac{5}{100}$ acres; the northeast quarter of the southeast quarter, containing forty acres; and the north half of the southeast quarter of the southeast quarter, containing 20 acres, all in section 3, in township 3 north, of range 14 west; and the northeast quarter and the east half of the northwest quarter of section 27, in township 6 south, of range 9 west, containing together 240 acres.

And it further appearing to the court that said defendant, John M. Ross, as financial receiver of said defendant, the Bank of the State of Arkansas, has in his hands, possession, and custody a large amount of the bills and notes for circulation, issued by the Real Estate Bank of the State of Arkansas, and belonging to saie defendant, the Bank of

the State of Arkansas, and which are in equity subject to the payment of debts due by her.

And the court being now well and sufficiently advised of and concerning the premises, and of what order, sentence, and decree to make and render herein, it is therefore ordered, adjudged, and decreed by the court here, that the said defendant, Charles J. Krebbs, do pay to said complainant the said amount of second note to said bank, when the same falls due as aforesaid, on the thirteenth day of September, A. D. 1850, and that the said complainant may have execution hereof against the said Charles J. Krebbs, after the expiration of that time; and that such indebtedness of the said Charles J. Krebbs be, and is hereby, assigned, transferred, and set over to said complainant, together with all or any mortgage, lien, or security held by or under the control of said bank, to secure the payment of the same; and that upon payment thereof by said Krebbs, the same shall be a complete release and acquittance to him from said bank in respect thereof.

And it is further ordered, adjudged, and decreed by the court here, that unless the said defendant, the Bank of the State of Arkansas, shall, on or before the first day of May next ensuing, pay, or cause to be paid, to said complainant the residue of said debt, damages, and costs, and the interest accrued and accruing thereon, so as aforesaid, recovered by and adjudged to said complainant against said bank, after deducting therefrom the amount so as aforesaid decreed to be paid by said defendant, Charles J. Krebbs, as the debtor of said bank to said complainant, then all and singular the said lots, tracts, or parcels of land and premises, or so much thereof as may be requisite therefor, be subjected to sale, and sold to satisfy such residue of said judgment in favor of said complainant against said bank, together with the costs of this suit.

And it is further ordered, adjudged, and decreed by the court here, that Gordon N. Peay, the clerk and master of this court, be, and he is hereby, appointed a commissioner to carry this decree into execution; and that said commissioner do expose and offer for sale, at public outcry, to the highest bidder, for ready money, at the court-house door in the city of Little Rock, in said county, on the first day of May next ensuing, between the hours of 9, a. m., and 3, p. m., of said day, having first given notice of the time, place, and terms of such sale, and containing a description of the real estate and property to be sold, by advertisement in the Arkansas State Gazette and Democrat, a newspaper printed and published in said city, for at least six weeks in succession preceding said day of sale, all and singular the said lots, tracts, or parcels of land and premises, or a sufficiency thereof, to satisfy such residue of said debt, damages, interest, and costs so adjudged to said complainant against said defendant, the Bank of the State of Arkansas, and the costs of this suit; and that such commissioner do make, execute, acknowledge, and deliver to the purchaser or purchasers of such real estate, or any part thereof, at such sale so made and held, proper and valid deed or deeds of conveyance therefor, reciting the premises,

and conveying and assuring to such purchaser or purchasers respectively all and singular the right, title, interest, estate, or claim, at law or in equity, of the said several defendants herein in or to said real estate so sold on the thirteenth day of August, A. D. 1849, or at any time since.

And it is further ordered, adjudged, and decreed, that in case the proceeds of such sale so made fails to produce such satisfaction as aforesaid, said defendant, John M. Ross, the financial receiver of said bank, do deliver to the said commissioner forthwith, on or after the said first day of May next, all and singular the bills and notes for circulation issued by said Real Estate Bank, or a sufficiency thereof to satisfy any such residue of said debt, damages, interest, and costs so adjudged to said complainant of or belonging to said bank, and in his hands, possession, or custody on the said thirteenth day of August, A. D. 1849, or at any time thereafter, to be by said commissioner exposed for sale to satisfy such residue; and that said commissioner do expose for sale, and sell, such bills and notes for circulation issued by said Real Estate Bank, so delivered to him by said financial receiver, at said court-house door in said city, on the third day of June next ensuing, between the hours of 9, a. m., and 3, p. m., of said last mentioned day, at public auction, to the highest bidder, for ready money, or a sufficiency of said bills and notes, to satisfy such residue of said amount so adjudged in favor of said complainant and against said defendant, the Bank of the State of Arkansas, together with the costs of this suit; the said commissioner having first given notice of the time, place, and terms of said last mentioned sale, containing a description of the property to be sold, by advertisement in said newspaper for at least two weeks in succession preceding said day of sale.

And it is further ordered, adjudged, and decreed by the court here, that the said commissioner do have before the court here, on the second day of the next ensuing June term thereof, the moneys realized by him from the sales aforesaid; and such moneys be applied, first, to pay the costs of this suit and the expenses of executing this decree, to be allowed and taxed, and that the residue be applied to the satisfaction of the said residue of the debt, damages, interest, and costs recovered by said complainant against said defendant, the Bank of the State of Arkansas; and that the right be reserved to said complainant, in case the moneys so realized by said commissioner from such sale should not suffice for such satisfaction, by supplemental bill, or other appropriate remedy in the premises, to apply for the discovery sought in said bill of complaint, and to pursue and obtain such satisfaction out of any other or further equitable assets of said defendant, the Bank of the State of Arkansas.

And it is further ordered, adjudged, and decreed, that said commissioner make report of his proceedings herein to this court on the second day of the next term thereof; and that, for that purpose, this cause be until then continued.

And the said defendant, the Bank of the State of Arkansas, by her

solicitors, excepted, on the rendition of the decree in this cause, to the appointment of the commissioner therein, and presents to the court her bill of exceptions in respect thereof, which is signed, sealed, and ordered to form a part of the record of this cause.

And the said Bank of the State of Arkansas prays an appeal from the decree of this court in this cause to the supreme court of the State of Arkansas, and files her motion and affidavit of John M. Ross and David W. Carroll therefor; and the court sustains said motion, and doth order that such appeal be granted and allowed accordingly herein.

Bill of exceptions.

In the Pulaski circuit court, on the chancery side, December term, A. D. 1849.

JAMES M. CURRAN
vs.
THE BANK OF THE STATE OF ARKANSAS et al.

Be it remembered, that on this 23d day of February, 1850, when the court overruled the demurrer of said bank, and the bank stood on such demurrer, and the court announced what decree would be rendered, and directed the clerk, Gordon N. Peay, to enter such decree; the complainant, by his counsel, moved for the appointment of a commissioner to sell the property mentioned in the bill, and the court, against the objection of said bank, appointed the said Gordon N. Peay as such commissioner; and which objection was based, not on any personal grounds, but on the fact, which was offered to be proved, and which was admitted to be true, and was known to the court that the said Gordon N. Peay was, and is, the master in chancery of Pulaski county and of this court, and consequently that there was an incompatibility in his being such commissioner, and that by law he could not be such commissioner, and ought not to be appointed; but the court disregarded the objection, and appointed said Gordon N. Peay, the clerk of this court, such commissioner; to which the said bank excepted at the time, and this bill of exceptions to preserve, &c., is now signed, sealed, and made a part of the record.

WILLIAM H. FIELD, [SEAL.]
Judge of Pulaski circuit court.

Filed 23d February, 1850.

GORDON N. PEAY, *Clerk.*

Motion and affidavit for appeal.

Pulaski circuit court, December term, A. D. 1850. In chancery.

JAMES M. CURRAN, complainant,
vs.
THE BANK OF THE STATE OF ARKANSAS, the State of Arkansas, et al.

The said defendant, the Bank of the State of Arkansas, by John M.

Ross, the financial receiver of said bank, and David W. Carroll, her attorney, comes and moves for an appeal in this case from the decision of this court, overruling the demurrer of the said defendant, and rendering a decree in favor of the said complainant; and on their oath do state, that the appeal is not made for vexation or delay, but because the affiant verily believes that the appellant is aggrieved by the decision or judgment of the court.

JOHN M. ROSS,
Financial receiver,
D. W. CARROLL,
Attorney.

Subscribed and sworn to in open court, this 23d day of February, A. D. 1850.

GORDON N. PEAY, *Clerk.*

Filed 23d February, 1850.

GORDON N. PEAY, *Clerk.*

Proceedings had 23d February, 1850.

JAMES M. CURRAN, complainant,
vs.
THE BANK OF THE STATE OF ARKANSAS, the State of Arkansas et als., defendants.
} In chancery.

This day comes the defendant, the State of Arkansas, by John J. Clendenin, attorney general, and files her motion for an appeal to the supreme court of the State of Arkansas, from the decree of this court in this cause, and the court sustains said motion, and doth order that such appeal be granted accordingly, but that such appeal shall not operate as a supersedeas, unless the party enters into recognisance for that purpose in the manner prescribed by the statute; whereupon the State declines to enter into such recognisance, and the court overrules the motion for a supersedeas; whereupon the State, by leave of the court, withdraws her application for an appeal and supersedeas in this cause.

STATE OF ARKANSAS,
County of Pulaski, ss.

I, Gordon N. Peay, clerk of the circuit court for said county, do hereby certify, that the annexed and foregoing fifty-one pages contain a true and complete transcript of the record and proceedings in said court in the cause therein mentioned, as the same remains of record in my office.

In testimony whereof I hereunto set [my] hand as such clerk and affix the seal of said court, this 11th day of March, A. D. 1850.

[L. S.]

GORDON N. PEAY, *Clerk.*

And afterwards, to wit, on the said 20th day of March, A. D. 1850, were the following proceedings in our said supreme court, to wit:

State's application for appeal.

At this day comes the State of Arkansas, by her solicitor, and on motion it is ordered, that she have leave to file her petition for an appeal from the decree of the circuit court of Pulaski county, in a case therein, wherein James M. Curran was complainant, and the Bank of the State of Arkansas and others were defendants, and that said decree be stayed as to her by a peremptory order of this court; and thereupon said petition is filed, and a transcript of the record in said case therewith presented to the inspection and consideration of the court.

Which said petition so filed is in the following words, to wit:

Petition of State.

And the said State comes and demands an appeal, and that said decree shall be stayed as to her by a peremptory order of this court upon the following grounds, to wit:

1st. That the circuit court had no jurisdiction in such a case as is presented in said bill against the State, and that by the statute the jurisdiction is confined to actions upon which a summons is to be issued, and to cases at law exclusively.

2d. That the court had, under the law, no authority to order a sale of said lands, and said decree could only be executed by an act of the legislature, and that said order is unauthorized and absolutely null and void, &c.

3d. Because said decree is not authorized by the facts set forth in said bill and admitted by the demurrer. Should the court refuse an appeal on the ground that the proceedings are void as to the State, she prays a perpetual supersedeas against said decree.

CLENDENIN, *Attorney general,*
F. W. & P. TRAPNALL,
For the State.

And afterwards, to wit, on the 21st day of March, A. D. 1850, were the following proceedings:

Submission of petition.

At this day come the said petitioner, by her attorneys, and the said James M. Curran, and the petition in this case for appeal being argued, is submitted, and by the court taken under advisement.

And afterwards, to wit, on the 10th day of April, A. D. 1850, were the following proceedings, to wit:

Grant of appeal.

The court being sufficiently advised of the petition of the State of Arkansas, for an appeal from the decree of the circuit court of Pulaski

county, in chancery, made at the December term, A. D. 1849, on the 23d day of February, A. D. 1850, in a case therein then pending, wherein James M. Curran was complainant, and the Bank of the State of Arkansas, John M. Ross, financial receiver, and David W. Carroll, attorney of said bank, the State of Arkansas, and Charles J. Krebbs, were defendants, and of a supersedeas of said decree, and that the proceedings under said decree be stayed as to her by a peremptory order, and being of opinion that there is such doubt as to the correctness of said decree that said petition ought to be granted; it is therefore ordered, that an appeal from said decree of said circuit court, in chancery, in said cause to this court be, and the same is hereby, granted to the State of Arkansas; and it is further ordered, that all proceedings under and by virtue of said decree be stayed until the appeal therefrom hereby granted be heard and determined in this court, and that said appeal operate as a supersedeas and stay of the execution of said decree without bond or recognisance on the part of said State.

And afterwards, to wit, at a supreme court of said State, begun and held at the court-house, on the first Monday, being the first day of July, A. D. 1850, to which term this cause was continued by operation of law, and on the sixth day of July, were the following proceedings, to wit:

Agreement of record.

At this day come the said appellant, the State of Arkansas, by Frederick W. Trapnall, esq., her attorney, and said appellee in proper person, and in open court agree and consent that the appeal by this court granted to the said appellant in this case at the January term, A. D. 1850, of this court, be adjudicated upon the transcript of the record filed in the case of the Bank of the State of Arkansas, John M. Ross, financial receiver, and David W. Carroll, bank attorney, vs. James M. Curran, it is thereupon ordered that the appeal by this court granted to said appellant be adjudicated upon the transcript now on file in said cause, and that said two appeals progress and be heard as if the said appeal had been granted to said State by said circuit court.

And afterwards, to wit, on the seventh day of August, A. D. 1850, were the following proceedings, to wit:

Filing assignment, &c.—Joinder.—Submission.

At this day come the said appellants, by their solicitors, and on motion it is ordered, that their assignment of errors be filed, and thereupon the same is filed. And thereupon, on motion, said appellee files his joinder in error, and this cause is submitted and by the court taken under advisement.

Which said assignment of errors is in the following words:

Assignment of errors.

And the said appellants, by their solicitors, come and say, that in

the record, proceedings, and in the giving of the decree aforesaid, there is manifest error in this, to wit: (1.) That the court rendered a final decree without first setting the cause down for hearing. (2.) That the court, against the objection of the said bank, appointed Gordon N. Peay, commissioner to sell certain property mentioned in the bill. (3.) And in this, to wit, that the decree, in form aforesaid given, appears to have been rendered for the said appellee, and against the appellants; whereas, by the law of the land, such decree should have been given for the appellants. Wherefore, for these and other manifest errors, the appellants pray that the said decree may be reversed with costs, and they restored to all they may have lost thereby.

D. W. CARROLL,
S. H. HEMPSTEAD,
For the bank.
F. W. TRAPNALL,
J. J. CLENDENIN,
For the State.

And said joinder in error is in the following words:

Joinder in error.

And the said appellee comes and says, there is no error in the record and proceedings aforesaid sent here, or in the rendering the decree aforesaid, and he prays the court here will proceed to examine as well the record and proceedings aforesaid as the matters above thereof assigned for error, and that said decree may be in all things affirmed, &c.

WATKINS & CURRAN,
For appellee.

And afterwards, to wit, at a term of said court begun and held on the first Monday, being the 6th day of January, A. D. 1851, to which term this cause was continued by operation of law, and on the 26th day of April, of said term, were the following proceedings, to wit:

Petition to extend supersedeas.

At this day come the said appellants, by their solicitors, and, on motion, it is ordered, that they have leave to file their petition, that the supersedeas heretofore granted to the State may be extended so as to prohibit the sheriff of Pulaski county from selling the lots and lands in the transcript of the record in this cause mentioned, under writs of ven. ex., now in the hands of the sheriff of said county, until the determination of this cause, or a separate supersedeas; and thereupon said petition, together with a copy of a writ of ven. ex. is filed; and the same, after argument, is submitted, and by the court taken under advisement.

And said petition is in the following words:

Copy of petition.

To the honorable the Supreme Court.

The Bank of the State of Arkansas and the State of Arkansas respectfully represents, that James M. Curran recovered judgment against the Bank of the State of Arkansas, before John C. Peay, a justice of the peace of Pulaski county, on the 12th day of May, 1849; that executions were issued on said judgments and were returned nulla bona, and that thereupon transcripts were taken and filed in the circuit court of said county; and whereupon executions were issued therein from that court which were likewise returned nulla bona; that the said James M. Curran filed his bill against the said State and others, to subject certain town lots and lands which had been conveyed to said State, and which were alleged to have been fraudulently conveyed by the Bank of the State of Arkansas to the payment of said judgments, and alleging that there was no remedy at law to procure such satisfaction; on which bill such proceedings were had in said circuit court that the said town lots and lands were decreed to be sold and the proceeds applied to the payment of said judgments; from which decree an appeal was taken to this court by the said bank, and this honorable court granted to the State an appeal, and ordered and adjudged that the same should operate as a supersedeas without security; that afterwards the said James M. Curran procured executions to be issued on said judgments, and to be levied on the same identical town lots and lands mentioned in the said bill of complaint, and in controversy between the parties; that fifty writs of ven. ex. have been placed in the hands of the sheriff of Pulaski county, each writ embracing the identical property mentioned in the bill, and which is advertised to be sold on Monday, the 2d day of June, A. D. 1851, at the court-house in Pulaski county, the said executions being similar, issued at the same time, between the same parties, embracing the same property; a true copy of one of them, No. 44, together with the return of the sheriff and the advertisement of the sheriff, is hereto appended, and prayed to be taken as part hereof, marked exhibit A; and that the sheriff will proceed to sell the same unless he shall be arrested therein. The petitioners submit that after the granting of said appeal to the State, and the order of this court, that the same should operate as a supersedeas, and while that case is pending and undetermined, it is not competent for the said James M. Curran to proceed at law to sell the same identical property which is in contest in the chancery suit, and the title to which property is in the said State; that no one has a right to proceed at law and in equity at the same time with regard to the same subject matter. The petitioners therefore pray that the supersedeas heretofore granted to the State may be extended so as to prohibit the sheriff of Pulaski county from selling the said lots and lands under the said writs of ven. ex. until the said suit in equity shall be determined, or a separate supersedeas. And the said petitioners refer to said suit now pending in this

honorable court to sustain the allegations and statements in this petition.

April, 1851.

JOHN J. CLENDENIN,
Attorney General.
S. R. HEMPSTEAD,
For the State Bank.

And said exhibit **A** is in the following words, to wit:

Exhibit A, to petition.

STATE OF ARKANSAS,
County of Pulaski, ss.

The State of Arkansas, to the sheriff of Pulaski county, greeting:

Whereas James M. Curran, on the 28th day of May, A. D. 1849, did file in the office of the clerk of the circuit court of the county of Pulaski, a certified copy of a certain judgment rendered by John C. Peay, esquire, a justice of the peace in and for the township of Big Rock, in the said county of Pulaski, whereby it appears that said justice of the peace did, on the 12th day of May, 1849, render judgment in his favor against the Bank of the State of Arkansas, for the sum of one hundred dollars, debt, and also the sum of fifty-five dollars, damages, besides costs, which costs amount to the sum of two dollars and eighty-seven cents; and that on the 19th day of May, 1849, an execution was issued thereon, and that the said execution has been returned; that the defendant has no goods or chattels whereof to levy the same. And whereas the clerk of said circuit court did, at the time of filing such transcript as aforesaid, enter such judgment in the docket of said circuit court for judgments and decrees, in the manner provided by law, to the end that the same might have the like effect and be carried into execution in the same manner as the judgments of such circuit court. And whereas the said James M. Curran, on the 22d day of April, A. D. 1850, sued out of the office of the clerk of the Pulaski circuit court an alias fi. fa. writ of execution, for the recovery of the debt, damages, and costs aforesaid, returnable on the 2d day of our June term, 1850; and whereas also, the said alias fi. fa. execution was levied on the following described property, viz: lots numbered 1, 2, 3, 10, 11, and 12, in block numbered 7, west of the Quapaw line in the city of Little Rock; the west half of lots numbered 1, 2, and 3, in block numbered 81, west of Quapaw line, in the city of Little Rock, and the improvements thereon, including the office and banking house of said Bank of the State of Arkansas. Lots numbered 1, 2, 3, 4, 5, 6, 7, 8, and 9, in block numbered 59, in the city of Little Rock; lots numbered 10, 11, and 12, in block numbered 101, west of the Quapaw line, in the city of Little Rock. Lots numbered 1, 2, and 3, in fractional block numbered 4, in Rector town. The south fractional half of the northwest fractional quarter, (north of the Arkansas river,) and the south residuary half of the north-

east quarter, (north of Arkansas river,) both in fractional section 36, in township 1 north, of range 11 west. The southwest quarter of section 27; the west half of the northwest quarter of section 27; the southeast quarter of section 28; the south half of the northeast quarter of section 28; and the west fractional half of the northwest fractional quarter of fractional section 34, all in township 1 north, of range 14 west. The southwest quarter of section 33, and the northeast quarter of the southeast quarter of section 32, in township 2 north, of range 12 west, containing 200 acres. The east half of the northwest quarter, containing 80 acres; the northeast fractional quarter, (south of Arkansas river,) containing 87. 25 acres; the northeast quarter of the southeast quarter, containing 40 acres; and the north half of the southeast quarter of the southeast quarter, containing 20 acres, all in section 3, in township 3 north, of range 14 west. And whereas, also, the above described property remains unsold and said judgment unsatisfied, therefore you are hereby commanded, that you expose for sale, and do sell, the property above specified and levied upon as aforesaid; and that you cause to be made the debt, damages, and costs aforesaid, together with the additional costs, to wit, the sum of seven dollars, and have the same before our said circuit court on the second day of our June term, A. D. 1851; and that you then and there certify how you have executed this writ.

In testimony whereof I, Gordon N. Peay, clerk of said court, have hereunto set my hand and affixed the seal of such court, this [SEAL.] 20th day of March, A. D. 1851.

GORDON N. PEAY, *Clerk.*

PULASKI COUNTY, *ss.*

I certify that the foregoing is a true and correct copy of execution, No. 44, in the case therein mentioned, and that there are 49 other similar writs of execution, embracing the same property, and all of which came to hand on the 29th of March, A. D. 1851, and are between the same parties. And I further certify, that the property within mentioned has been advertised for sale by me, as will appear by the annexed advertisement.

BEN. F. DANLEY, *Sheriff.*

Sheriff's sale.

Notice is hereby given that by virtue of sundry writs of venditioni exponas executions issued from the office of the clerk of the circuit court of the county of Pulaski, in the State of Arkansas, and to me directed as sheriff of said county, I will expose for sale at public auction, to the highest and last bidder for cash in hand, on Monday, the second day of June, A. D. 1851, between the hours of nine o'clock in the forenoon, and three o'clock in the afternoon, of said day, (said day being the first day of the June term of the circuit court of said county of Pulaski, A. D. 1851,) at the door of the circuit court-house of said county of Pulaski, the following described lands and town lots, lying

and being situate in said county of Pulaski, to wit: Lots numbered 1, 2, 3, 10, 11, and 12, in block numbered 7, west of the Quapaw line, in the city of Little Rock; the west half of lots numbered 1, 2, and 3, in block numbered 81, west of the Quapaw line, in the city of Little Rock, and the improvements thereon, including the office and banking house of said Bank of the State of Arkansas; lots numbered 1, 2, 3, 4, 5, 6, 7, 8, and 9, in block numbered 59, in the city of Little Rock; lots numbered 10, 11, and 12, in block numbered 101, west of the Quapaw line, in the city of Little Rock; lots numbered 1, 2, and 3, in fractional block numbered 4, in Rector town; the south fractional half of the northwest fractional quarter, (north of the Arkansas river,) and the south residuary half of the northeast quarter, (north of Arkansas river,) both in fractional section 36, in township 1 north, of range 11 west; the southwest quarter of section 27; the west half of the northwest quarter of section 27; the southeast quarter of section 28, the south half of the northeast quarter of section 28, and the west fractional half of the northwest fractional quarter of fractional section 34, all in township 1 north, of range 14 west; the southwest quarter of section 33, and the northeast quarter of the southeast quarter of section 32, in township 2 north, of range 12 west, containing 200 acres; the east half of the northwest quarter, containing 80 acres; the northeast fractional quarter, (south of Arkansas river,) containing 87.25 acres; the northeast quarter of the southeast quarter, containing 40 acres, and the north half of the southeast quarter of the southeast quarter, containing 20 acres, all in section 3, in township 3 north, of range 14 west. Levied on as the property of the Bank of the State of Arkansas to satisfy said executions.

BEN. F. DANLEY,
Sheriff of Pulaski county, State of Arkansas.

Sheriff's office, Little Rock, Ark., April 18, 1851.

And afterwards, to wit, on the 10th day of May, A. D. 1851, were the following proceedings, to wit:

Order of stay of execution.

The court being sufficiently advised of the petition of said State of Arkansas to extend the supersedeas heretofore granted in this cause, it is ordered that the sheriff of Pulaski county cease all further action under the writs of venditioni exponas, now in his hands, commanding him to sell certain lots and lands in the bill in this cause mentioned, to satisfy the judgments obtained by said appellee against the Bank of the State of Arkansas, and that said appellee, the sheriff of Pulaski county, and the clerk of Pulaski circuit court, and all others, be restrained from all further action upon the judgments obtained by said appellee against said bank, to sell the lands and lots in said bill, until the adjudication of this cause in this court.

And afterwards, to wit, at a term of said court, begun and held on

the said first Monday, being the 7th day of July, A. D. 1851, to which term this cause was continued by operation of law; and on the 1st day of November of said year were the following proceedings, to wit:

Final judgment of sup. court.

This cause came on to be heard upon the transcript of the record of the circuit court of Pulaski county, in chancery, and was argued in this court by the solicitors of the parties; on consideration whereof, it is the opinion of the court that there is error in the proceedings and decree of said circuit court in this cause, in this: That said circuit court erred in overruling the demurrer therein filed to the complainant's bill therein and proceeding to decree in his favor; whereas said court ought, on the contrary, to have sustained the demurrers. It is therefore considered, ordered, and decreed, that said decree of said circuit court in chancery, in this cause be, and the same is hereby, for the said errors reversed, set aside, and held for nought, with costs, and that this cause be remanded to said circuit court, with instructions to sustain the demurrers therein in accordance with the opinion herein delivered. It is further ordered and decreed that said appellee pay to said appellants all their costs in this court in this cause expended, and that they have execution thereof.

And at the same time the opinion of the court was delivered by the Hon. C. C. Scott, judge, in the following words:

Opinion of the court.

The first question to be determined is that presented on the part of the State of Arkansas, who, by her counsel, contends that no suit can be brought against the State without her consent, and then only in the mode indicated by that consent, and insists that by law arising upon the facts in this record no such consent has been given as to make her amenable in this case. And this question has to be solved by an exposition of our constitutional and statutory provisions touching the grant in the light thrown upon them by the principles of the common law, and the regulations of the English statute on this subject; or, in other words, by the general principles of public and municipal laws, and the known usages of other enlightened nations. And it may be safely assumed, that it was never contemplated by the people when they instituted the government under which we live, that the rights of property should be less secure under our institutions than under those of other enlightened and refined nations that had before arisen in the world. Because it was the great purpose of all our regulations to elevate individual man by securing for him his more important rights, that he might have a staid foundation and a free scope for the pursuit of happiness.

That the subject should be allowed to implead the sovereign in his own tribunals, and have justice meted out to him according to law,

has been by no means unknown in governments far less popular and free than our own. Even the more despotic governments have not entirely denied this privilege, to say nothing of the governments of the ancient world, whose history affords examples in point; those of Spain, France, Prussia, and England have almost always, in some form or other, allowed of this right in the subject, and, in some instances, have afforded him imperative process for its vindication. Indeed, the principle from which it springs has been, in theory at least, openly avowed by most, if not all these governments, as existing in their roots. In the consecration ceremony of the King of Arragon, not only was it avowed in the language used when the crown was bestowed, but also by interposing between the person of the bestower and the King elect an impersonation of law, thereby more emphatically to declare that the law was greater than the King, and was to remain between his subject and himself. Nor was this altogether in effect but an idle phantasm in the constitution of Spanish monarchy, as is shown by the historical fact, that, after Don Diego, the son of Columbus, had wasted two years in fruitless solicitations at the court of Spain for the rights in the new world that had descended to him from his father, he resorted to the Council of Indian Affairs, and there obtained a legal sentence against Ferdinand; and thus by the integrity of that tribunal was placed in the enjoyment of rights that had been denied him by an unjust monarch.

And it was the boast of the great Frederick, of Prussia, who disdained to avail himself of any of the privileges of sovereignty when they conflicted with any of the rights of property of his subjects, that "in the estimation of justice all men are equal, whether the prince complain of the peasant or the peasant complain of the prince."

And such was the law of the Saxon Kings, and up to the time of Edward the 1st, of England. And the process by which those rights of the subject were enforced was not then precatory, but mandatory and imperative, "command Henry, King of England," &c. Nor is it known at what precise period this law of England was changed; it is known, however, that for several centuries last past the process has been changed to petition of right; but, although the process has been changed for the enforcement of these rights, the rights themselves have not been otherwise any the less recognised. Since the change of the law in this respect, the subject, when a plaintiff, cannot proceed against the Crown either for property or money otherwise than by petition. But not so, however, when the Crown enters the courts as a defendant in a suit instituted by itself as plaintiff. In that case the Crown disrobes itself of its privileges and comes down to the equality of the subject, and henceforward, in the litigation of the rights touching that subject matter, the subject has all the rights against the Crown that, under like circumstances, he would have in the courts against another subject, his peer. And this will appear not only by the remarks of Lord Somers in the Banker's case, (1 Freeman, 331; 5 Mod., 29; Skinn., 601.,) when he instances the case of a title found for the King by

office, and the subject comes into the proceeding to traverse the King's title and show his own right to the thing, but by the other cases he cites. And is also the foundation of the remark of the judge of the High Court of Admiralty, in England, in a case cited from Cal. Jur., 68, that "in any case where the Crown is a party, it is to be observed that the Crown can no more withhold evidence of documents in its possession than a private person. If the court thinks proper to order the production of any public instrument, that order must be obeyed. It wants no insignia of an authority derived from the Crown.

And doubtless upon the same foundation, in a proper case, an injunction might issue from one of our courts against an unconscionable judgment obtained by the State against a citizen, even in case the laws provided no means for making the State a defendant in any case. But, although this might be so, and in such a case a bill in chancery of the class of bills not original would be the rightful remedy, this would lay no just foundation upon which the citizen could claim a right to every remedy against the State which could be achieved by all others of that class of bills, and thus include cases of wrong where the State had not, by appearing in the courts as plaintiff, submitted to the jurisdiction, as seems to be contended for in argument. Because such a conclusion would be too broad for the premises, and consequently its greater part would have no logical connexion with that foundation.

Nor could a subject, when a plaintiff in a suit against the Crown, proceed, even by petition of right, any further than the petition itself, until there had been first an act on the part of the Crown which, as an act on its part as defendant, was precisely equivalent to that which it does as plaintiff when it goes into the courts as such; which act was an endorsement on the part of the King, "Let right be done to the party." Upon which being done, unless the attorney general confessed the suggestion contained in the petition, and the relief was thereupon awarded, a commission was issued to the proper tribunal to inquire into its truth, where the King's attorney pleads in bar, and the merits were determined upon issues of fact or demurrer in every respect as between subject and subject.

This is all laid down in the old books, and is collated by the learning and industry of the several judges, who deliver opinions seriatim in the case of Chisholm's executor vs. the State of Georgia, (2 Dallas R., 419.) From which we learn, also, that the petition of right not only lay for every sort of estate in lands, but for chattels, real and personal, and for rights growing out of civil injuries, and those founded in contract, express or implied. And that after statute 8 Edward I, which so directed all such petitions as touched the seal, came to the King through the hands of the chancellor; those which touched the exchequer through the exchequer; and those which touched the justices or the laws of the land through the hands of the justices; and all others through some chief minister.

But, although there was so much uniformity in the mode of presentation, there was some contrariety as to the endorsement made upon

them on the part of the Crown; and this contrariety seems to have determined the destination of the petition, so far as the tribunal was concerned that was to be commissioned to dispense justice touching its subject-matter. The usual endorsement, however, was in the general terms we have mentioned, and in all such cases the commission went to the chancellor; but, if the endorsement was special as to a particular tribunal, or otherwise, the commission corresponded. This contrariety arose in some cases from the prayer of the petition itself, as if it was special that the command should be sent to the justices to proceed to examination and award the justice due; the endorsement would be made accordingly, and then the justice might proceed without even any commission, the petition and the answer endorsed upon it giving them sufficient jurisdiction. And Lord Somers remarks, that, after thorough examination, he had been unable to find even a single case where the general endorsement had been made in any case belonging to the revenue; the usual endorsement in such case having been to the treasurer and barons, commanding them to do justice. Sometimes, however, a writ was issued from the chancery, directing the payment of the money immediately, without taking notice of the barons.

Thus it appears, that an endorsement on the part of the Crown was necessary in every case, and that it served the double purpose of signifying a submission to the jurisdiction of some court, and to point out the particular tribunal; the remedy by petition being, as remarked by Blackstone, "matter of grace, and not matter of compulsion," it could not proceed beyond the petition without a gracious dispensation on the part of the Crown.

The extent of this remedy, as we have seen, seems to have been thus received as law until the time of Lord Mansfield, who, in the case of Macbrath vs. Haldeman, (1 Dumford and East., 172,) in support of the doubt suggested in that case, whether the petition would then lay for a money demand touching the public supplies, distinguished such cases concerning the current expenses and public supplies of the Government from the great mass of other cases, where the subjects might have rights against the Crown, upon the ground that, since the revolution of 1688, the "supplies had always been appropriated by Parliament to particular purposes; and now whoever advanced money for the public service trusts to the faith of Parliament." He did not, however, determine the doubt suggested, because, as he said, it was not necessary in the determination of the case before him. But he gave color to its validity, not only by these remarks, but by the further observations that in such cases the proceedings would probably produce no effect, because, "if there were a recovery against the Crown, application must be made to Parliament, and it would come under the head of supplies for the year."

Such, then, was the state of the law at the time of our separation from the mother country. And upon this foundation, and upon the still deeper one that "the King is above the laws," which has been of the essence of the British Constitution ever since the time when feudal

institutions not only usurped all property in the land, but also the entire administration of justice, is based an American notion that a State cannot be sued by one of its own citizens without the consent of the Government, expressed in a constitutional form. A notion which might have been plausibly challenged, if the question was an open one in the courts of this country, as a sickly exotic in American soil, where government is not prescribed to the people by a superior power, but is merely the organ of their own sovereignty, and the creature of laws enacted by themselves, and which derive all their obligatory force from the mutual consent of those who are to render them obedience. Because, in the absence of any affirmative law to create exemption from liability, and as between a citizen who created a State government and that government, on a question relating to any individual right intended to be secured to that citizen by the institution of that government, there could be no more reason for refusing the right, according to the established forms of law, than there could be for refusing the same right against another corporation that was also created by the people—not by themselves in person, but by the exertion of the organ of their sovereignty—unless it could be shown that they had first delegated certain powers, and then surrendered to the government thus created all their other powers, which is directly in the face of the bill of rights. Because, otherwise, in a government purely of laws, and deriving all its authority from laws, there could not be any power or capacity that was above and exempt from law. Such power might be inactive in the people, to be exerted according to the forms of the Constitution, when deemed proper for a change of the laws; and such capacity might be created for the government by an affirmative exertion of those powers, but the government could not claim it as an inherent birthright, otherwise than the feudal Kings did by usurpation.

But the law is otherwise settled in all the courts of this country, and we shall so hold it, especially as it seems to have been so taken and accepted by the framers of our constitution in making the provision that our legislature should direct by law in what courts and in what manner suits may be commenced against the State. (Const. of Ark., Dig., pp. 48, § 22.) In pursuance of this provision of the constitution, several statutes, more or less touching this subject, were enacted by the legislature at their session of 1837–'38; all of which, although approved on different days, took effect on the 20th March, 1839, and are to be construed together as if passed on the same day, unless some of their provisions are repugnant to each other, and in that case the latter is to repeal the former provision. (Dig., p. 960, § 6.) Upon examination we are unable to find any conflict that amounts to repugnance, and therefore the provisions of all can stand and have effect. The provision (Dig., pp. 961, § 1) that "all actions against the State shall be brought in the circuit court of the county in which the seat of government is situated," is easily reconcileable with that making it the duty of "each attorney for the State" to "defend all suits brought against the State or any county in his circuit." (Dig., 191, § 2.) By the provi-

sions of the venue laws touching actions "deemed local at common law," (Dig., 796, § 7) and also by some of the provisions of the Escheat law. (Dig., 482, § 25, 26.) Beyond these apparent conflicts we have observed no want of harmony in the various provisions of the several statutes touching this subject contained in chapters 20, 21, 41, 64, 126, and 157. That the legislature designed by the various provisions of these enactments and by others touching the law of costs, to perform the duty directed by the provision of the constitution in question is to be gathered no less from the subject matter of these provisions than by the language used.

It is insisted, however, that in ascertaining what the legislature did provide in this connexion, that a strict construction should prevail, and that nothing should be intended in favor of the citizen's right to sue the State that is not within the express and explicit letter of the statute. No authority is produced for this except a case decided by the supreme court of Texas, (1 Texas R., pp. 769,) where the court remarks "that no State can be sued in her own courts without her consent, and then only in the manner indicated by that consent;" but no authority is cited or reason given, nor does it appear that the remark was made in reference to any question of construction, but simply to assert a general doctrine of the law, which would certainly be true if consent was given and a "manner" of proceeding fixed, and all others excluded. But upon a question whether more than one manner was provided it could have no application, except by asserting by implication a rule of strict construction, at the same time that it concedes the right of the government to fix more "manners" of proceeding than one.

Nor has any good reason been elsewhere assigned, so far as our researches have extended, why a rule of strict construction should govern a question like this. We have seen that it is not inconsistent with the usages even of despotic governments for a subject to sue his sovereign in his own courts of justice. And this right in the subject was unqualified in the English government, until the usurpations of the feudal kings, and was afterwards always allowed in a qualified form. And that by our constitution it is affirmatively directed to be provided for by legislative enactment, and not silently transferred within the sphere of their discretion, like many other matters without any notice. And it is known, as we have elsewhere said (Carnal vs. Crawford Co., 6 Eng., at pp. 619 and 621) that it was one of the objects of magna charta to place the right of Englishmen to apply to the courts of justice for the redress of grievances upon the footing of fundamental, absolute rights, and this has certainly never been lost sight of in American institutions, but always kept plainly in view.

The right of a citizen to sue a State, then, is not derogatory to common right or subversive of the true principles of the common law, but is clearly in harmony with both; and it cannot be supposed that the people in convention, in directing that the legislature should provide in what courts and in what manner suits may be commenced against the State, intended that their provision should be any other than such as

would advance this right in the citizen to "apply to the courts of justice for the redress of grievances." The spirit of the law, then, would rather demand a liberal than a strict construction. At any rate we can perceive no valid reason, either intrinsic or extrinsic, why we should interpret these acts of the legislature as we would a criminal statute that had created a new crime or misdemeanor, or a civil one that had taken from a citizen a common law right. With these observations we now proceed to the construction.

If we restrict the right of the citizen to sue the State, to what are technically actions at law, and exclude chancery proceedings, and then restrict these actions at law still further to the recovery of money demands, excluding the recovery of property, and then further restrict these particular actions to judgment merely, these various incongruities will appear in the law, both intrinsic and extrinsic.

1st, as to phraseology. "Suits" is the word used in the constitution, and that word is defined in the mind to be "the lawful demand of one's right," a definition that is amply broad to include every proceeding instituted in a court of law or chancery. The title of chap. 157 of the statute is "suits by and against the State." In the third section of the same act are the words "all suits against the State;" and in the second section of chap. 20, it is made the duty of the respective prosecuting attorneys to "defend all suits brought against the State." The word suit, then, whenever it occurs, would have to be narrowed in its meaning to actions at law.

2d. As to proceeding no farther than to judgment. The same section (Dig., pp. 962, § 5) that would restrict proceedings against the State to no progress beyond a final judgment, would seem to place the same restriction upon proceedings in favor of the State. The words of the act are, "all suits by or against the State, &c." Besides the provision of the next section which directs the auditor to transmit to the General Assembly a copy of such judgment and the proceedings thereon," could have no effect, so far as proceedings thereon are concerned, because that would be the end of the proceedings. And the act (Digest 193, § 4,) making it the duty of the clerk of the Pulaski circuit court to keep a judgment docket for judgment by and against the State, cannot supply this defect, even if that could be regarded as a proceeding on the judgment, because that was passed in the year 1843.

3dly. As to restricting the proceedings to such demands only as would be recoverable by an action at law.

Even if it could be supposed that the convention and the legislature had no eye to the security of the right of the citizen, and had only regard to the motive which seems to have induced the passage of the statute 8 Edward I, on the same subject, as disclosed by its preamble, to wit: "Whereas the business of Parliament is interrupted by a multitude of petitions which might be redressed by the chancellor and the justices," that motive itself would seem to have been sufficient to have prevented a discrimination, such as the supposed one; for surely there

would be in general less interruption to legislation by the examination of the grounds of a claim recoverable at law, than one founded upon accident or mistake, or other subject of equitable cognizance. And when the design to secure justice to the citizen is admitted as a concurrent motive, the improbability of any such designed discrimination is greatly enhanced; for surely the right of the citizen is as worthy of regard in case of equitable as in a case of legal cognizance.

4th. As to restricting the proceedings to money demands at least, excluding demands for property.

This, more than either restriction, has less of reason for its basis, whether the interest of the State or that of the citizen is considered; because a provision of law for a suit for property against the State, eo nomine, is at best much more matter of form than matter of substance; and the consideration of this point will develope how little the question we are considering deserved the prominence that has been given to it, and the gravity with which we have considered it. The most that such a provision can effect is to settle a question of title touching property between a citizen and the State by one suit instead of two. If such a proceeding was not authorized, the citizen claiming title to property held by the State would take proceedings against an officer of the Government in the possession or occupancy of the property, and would recover it on the strength of his own title shown. If the State had in fact paramount title, she would be driven to an after suit to regain it, not having thought proper to make her title available to her in the first action by way of defeating it. If, in fact, she had no paramount title, then no wrong is done her by the citizen's recovery in this indirect way. The case of Wilcox vs. Jackson, 13 Peters's R., 498, is a case of this class, where ejectment was sustained against the commander of a military post. The interests of the State, when she chooses to assert them in such a case under the name of the party to the record, are as well defended as if she was in fact a party herself. Where the right is in the plaintiff and the possession in the defendant, the inquiry cannot be stopped merely by the assertion of title in the State. But the court will proceed to investigate the assertion and examine the title, and if the pretensions of the plaintiff are well founded, and those set up under the State are not, the plaintiff must recover the thing he sues for, and no wrong is done the State.

If it was true that the court could not adjudicate between private parties upon any subject matter when the pecuniary interest of the State might be injuriously affected, because the State herself could not be sued without her consent, then no suit could be maintained by a non-resident against a citizen for the recovery of personal property, because the removal of it might affect her revenues. So far from this, it is no objection if the State be the sole party in interest, and the interest be in fact one between the plaintiff and the State, in truth and fact, although but nominally between the plaintiff and the defendants. The cases of Osborn vs. the Bank of the United States, (9 Wheaton, 738,) and the Michigan State Bank vs. Hastings, (1 Douglass's Mich. R.,

225,) are of this kind; and there are other cases which go to the fullest extent in establishing this doctrine.

It will be seen, then, that, so far from such a restriction militating against the interest of the State, those interests will be promoted at least to the extent of preventing any temporary deprivation of the possession of property that she might hold by good title in any case. But all these incongruities will disappear if the statute be construed to allow the State to be sued as well in chancery as at law, and as well for property as for money demand; and then every provision of the various statutes touching this subject will be found sensible, effective, and in harmony.

The process of summons is to be served upon the auditor in the commencement of every suit against the State for several reasons, and whether the suit be for property or money, some of those concur to make him the most appropriate officer in the entire government to whom the summons should be sent, as will at once appear when we contemplate his public functions. The statute (Dig., p. 201, § 7) provides that he "shall be the general accountant of the State, and keep all public accounts, books, vouchers, documents, and all papers relating to the contracts of the State, and its debts, revenues, and fiscal affairs not required by law to be placed in some other office." Thus, whether the suit be for property or money, the papers relating to the title or the contract in question would in general be in his office, and thus afford data for advice by him to the appropriate prosecuting attorney (Dig., p. 191, § 2) for the proper defence of the State. If the suit had been for property, and the plaintiff had recovered against the State, and had been awarded possession, then no less is it the duty of the auditor to "transmit to the legislature a copy of the judgment and the proceedings thereon," (which in that case would be the award of possession;) that "an appropriation might be made to satisfy the judgment," because such judgment would not be satisfied until the costs adjudged against the State had been paid; and this could only be done by an appropriation by the legislature, because of the provision of the statute exempting all property of the State, real and personal, from sale by execution. (Dig , p. 278, § 15.) And besides, by this means the legislature would be officially advised that property had been recovered from the State, and would also have data for investigation into the official conduct of the prosecuting attorneys touching the conduct of such suit.

Adopting, then, the more liberal construction of the statute, that makes it effective and harmonious in all its provisions and phrases, and which carries out the manifest design of the constitution, which, as we have said, was to advance the right of the citizen to resort to the courts of justice for the redress of grievances, we are of opinion that this objection raised on the part of the State cannot be sustained; on the contrary, the State was properly made a party.

This brings us to the consideration of the merits of this cause, which has been rightly regarded by counsel as an important one. Not im-

portant, however, on account of the magnitude of the sum involved; for that, as was justly observed by Spencer Roane, in the case of the Commonwealth vs. Beaumarchais, (3 Call. R., 145,) "is but a secondary consideration with any just government, and no consideration at all with every upright judge," but because that certain important principles of law are involved, and that in their discussion the honor and justice of the State has been in some sort implicated.

It is insisted with earnestness that the liquidation acts of our legislature are unconstitutional, and are unjust and iniquitous in operating to make the State a preferred creditor of the bank.

We must necessarily examine the first ground of objection, and whether or not the second will be responded to at all will depend, in a great measure, upon the result of such examination. Certain principles which seem to govern this question, and elucidate it satisfactorily, are as well settled, perhaps, as any in the law.

A law in force when a contract is made cannot, by its legitimate operation, impair its obligation, in the sense of the Constitution of the United States, for the reason that the existing laws are to be considered as entering into, and forming a part of, any contract and stipulation between the parties. (Blanchard vs. Russell, 13 Mass. R., 16.) And it was upon this foundation that the Supreme Court of the United States, in the case of Ogden vs. Saunders, (12 Wheaton, 213,) held that a bankrupt or insolvent law of any State which discharges both the person of the debtor and his future acquisitions of property, was not a law impairing the obligation of a contract, so far as it respects debts contracted subsequent to the passage of such law. And this doctrine is elsewhere recognised, and is, perhaps, no where seriously contested.

It is also equally well settled, that when an act of incorporation is a grant of political power, where it creates a civil institution, to be employed in the administration of the government, or where the whole funds of the institution are public funds, the charter is completely within legislative control. (4 Wheaton, 518.) Such corporations are created by the mere will of the legislature, and are in no way the result of contract. While those, however, through which the legislature seek to accomplish some public purpose, by the instrumentality of a second party, who is to advance some money, labor, or property, are the fruit and direct results of contract. The one is within the control of the legislature, as we have said, while the other cannot be dissolved, under the provision of the federal Constitution, otherwise than in pursuance of a power to do so reserved by the State, to be exercised upon the happening of some contingency, and is therefore one of the stipulations of the contract out of which the incorporation sprung.

Thus it will appear that much of the mystery that labor and learning have thrown about a dry point of law so plain, is the result of the ordinary division of corporations into public and private, instead of corporations that are either such as are independent of all contracts that respect property, or some object of value, or which confer rights

which may be asserted in a court of justice, and such as are the fruit and direct result of such a contract. And this will the more plainly appear, when we consider that all constitutional corporations are, in some sense, public, as they must be designed to effect some public good, as contradistinguished from private advantage, otherwise they would be "monopolies," that are declared in the Bill of Rights to be "contrary to the genius of a republic." (See Miller vs. Williams, 4 Iredell R., 511.)

That the State Bank of Arkansas was of the class of corporations that are thus within the legislative control has never been seriously contested; and that it cannot be otherwise considered, will abundantly appear by the consideration, that as an institution to be employed in the administration of the government, its funds were exclusively public funds; and its creation was in no way the fruit and result of a contract, there having been no second party whose concurrent act with the legislature was to give it life and being. This power over the entire charter necessarily embraced a like power over each one of its provisions as fully as the whole together, and authorized the legislature to take from the institution any power or capacity that had been conferred, whenever, in the exercise of their constitutional discretion, the public exigencies would seem to require such diminution. And previous to the 11th January, 1843, when the legislature repealed the common law as to the effect of the expiration of a corporation, either by its own limitation, judgment of forfeiture, or by legislative enactment, and made other provisions of law in their stead, (Dig., p. 278, ch. 39, § 16,) had the legislature exerted this undoubted power of repeal, and dissolved the charter of the State Bank, without making any further provision, which they had the power to withhold, all its real estate that remained in the corporation, up to the moment of its expiration, would have reverted back to the original grantor or his heirs, (see Angel and Ames on Con., ch. 5, § 2, 3d edition, p. 159, and the numerous authorities there cited,) the personal property would have vested in the State, or the people, (ib., p. 160,) and the debts due to and from the bank would have been extinguished; (ib., p. 160, and authorities there cited; and the case of the State Bank vs. the State, 1 Blackf. R., pp. 283, 284, where this point is examined on principle, as well as tested by authority; and Fox vs. Horch, 1 N. C. Eq. R., 359; Gaston, judge, delivering the opinion of the court.) And in that case the holder of one of the bills of the State bank would have had no remedy, save only that which sprung out of his direct contract with the State, resting upon the 28th section of the bank charter, whereby the State contracted with the bill holder that the bills and notes of the bank should be received in payment of all debts due to the State of Arkansas. And yet, the bill holder could not have complained that his contract with the bank for the payment of the bill (whether in that contract with the bank it had been either stipulated or not that his bill should be paid first, and in preference to any other debt due by the bank) had been in the slightest degree impaired, within the

meaning of the Constitution of the United States; because all these laws that we have referred to were in existence, and in full force, at the time he made his contract with the bank, and entered into, and were part and parcel of, the very contract and stipulation between him and the bank for the payment of the bank bill on the part of the bank. Each party contracting with a corporation being presumed, by law, to understand the nature and incidents of such a body politic, its liability to dissolution, and the consequences of such dissolution, the power of the legislature over its life and constitution, and the legitimate sphere of the constitutional provision for the integrity of contracts, and is presumed to contract, in reference to all these contingencies and regulations. (Angell and Ames on Con., p. 160, and authorities there cited.)

If this were not so in reference to rights that had become vested by inhering in things, the absurdity would result that the mere creature was greater than its creator, the stream higher than the fountain, and the disastrous consequences upon the state government would be incalculable in rendering immutable many civil institutions that might be set on foot for purposes of its internal government, and which, to subserve those purposes, ought to vary with varying circumstances. Accordingly, Judge Story remarks, in the case [of] Mamma vs. The Potomac Co., (8 Peters, at p. 287,) that "it would be a new doctrine in the law that the existence of a private contract of a corporation should force upon it a perpetuity of existence, contrary to public policy, and the nature and objects of its charter." And this principle is alike applicable to the repeal of corporations, which are the fruit and direct result of contract when the power of repeal is expressly reserved to the legislature, and in neither case will the courts presume that the power of repeal has been improperly or unconscientiously exercised by the legislature. (McLaren vs. Pennington, 1 Paige Ch. R., at p. 109.) Nor would the case be varied in principle if the note holder's contract with the bank for its payment was of a date subsequent to the change of the common law, as to the consequences of a dissolution of the charter of the bank, otherwise than as that statute varied this law, and to this extent varied his actual contract with the bank.

In neither case, then, would his contract have been impaired by an absolute repeal of the charter of the bank, although in the one case his debts against the bank would have been extinguished, and in the other his rights, although preserved, would have been in abeyance until the action of the legislature should be had thereon, unless some provision otherwise was made by the legislative act of dissolution. (Dig., p. 278, § 16.)

This being the legitimate result as to the question of constitutionality, had the legislature dissolved the charter of the bank instead of placing it in liquidation, as it did, it cannot be any the less the result of those acts of liquidation, unless a mathematical absurdity could be admitted, that a part is not included within the whole. Because the true nature and character of these acts are of the caste of true acts of dissolution, and as such are clearly embraced within the power to destroy the bank,

which we have seen was within the legitimate discretion of the legislature; in fact, are but the result of the exercise by that body of those very powers of destruction, in a modified form, and to a limited extent. And this is plain enough to be seen in the intrinsic character of the various provisions of the liquidation acts, in which it manifestly appears that in the judgment of the legislature the bank had failed to accomplish the public purposes and ends in their view at its creation, and had ceased to be a safe custodian and depository of the public funds, and in this condition was a rightful subject of dissolution at their hands.

And thus these acts of the legislature declare their own true source and character, and present themselves as legitimate instruments for the constitutional power of the legislature over the life and constitution of the bank. And in thus exhibiting the judgment of the legislature upon the exigency of the bank's short comings and condition, at the time when it was put in liquidation, and the true nature of the powers thereby exercised in the acts placing it in liquidation, all foundation is taken away for any argument that could be based upon the ground that, although the legislature had the clear right to destroy the bank by a dissolution of its corporate character, they could not constitutionally and by any and every capricious, arbitrary, and unconscionable intermedi ate act, impair the obligation of the bank to a bill holder. And besides this consideration, we have already seen that the courts will never presume that the legislature has improperly or unconsciously exerted such a power. And even if this was not so in the case before us, there is no possibility of any such presumption as to the acts in question, because the allegations of the complainant's bill abundantly show that the bank had failed to accomplish the public purposes in view at its creation before these acts were passed.

In the light of these views, then, we hesitate not to declare it as our opinion that the liquidation acts in question are all constitutional.

These acts, then, being laws of the land, they must have force and sway in their legitimate scope, without regard to their effect upon what would have been otherwise the complainant's rights under the general laws of the land. Because as to his rights in the premises, as we have seen, when considering the constitutional question, there was no defect of legislative power from constitutional limitations and restrictions upon it; and, consequently, they can only be claimed and meted out by the measure of the liquidation laws, in which we include all acts of the legislature touching the assets of the bank that have been passed since the day when that body, for public purposes and with public ends in view, legitimately placed that institution in liquidation. The effect of these liquidation laws upon all the rights of the complainant, founded upon the general law, as we shall more fully see in the sequel, being inevitably to place all such rights in abeyance at the legislative will to the extent that they may come in conflict with these paramount laws. A state of being for these rights contracted for by the complainant in his executory contract with the bank. Because the power of the legislature over the life and constitution of the bank, and all that was em-

braced in that power was then the law and in force, and as such formed a part of this very contract or stipulation between the complainant and the bank. And by this means the complainant, as to rights springing from this contract and to this extent, voluntarily disrobed himself of what would have been otherwise his constitutional guaranties, by a like process as that by which a party voluntarily despoils himself of such guaranties when he contracts for a summary judgment against himself. And although the public policy of a country may, and perhaps does, set some bounds to such relinquishments of private rights, none such are animadverted upon or held for nought by the law, that falls short of a direct conflict with some known public policy; and in this case, so far from there being such conflict, the voluntary surrender in question is in direct harmony and in furtherance of the policy of this State in the premises.

And in determining the true interpretation and legal effect of these various enactments, we are not to limit our examination to the provisions of those simply which are stated in the complainant's bill; but it is our province in search of the law, facts being in general the proper subject of pleading, to go far beyond this, and consider together all the enactments touching in any way the same subject matter, and also such uncontradicted history and public documents of the times of these several enactments that may shed light upon their various provisions. (Conway ex parte, 4 Ark., p. 367, 368; Warner vs. Bees, 23 Wend., pp. 134, 135, 136, 140.) And in these lights it may be remarked, in reference to the origin or foundation of these enactments, that a civil institution with large money capital furnished by the State, and important powers, for good or for evil, employed in the administration of the State government, and in that capacity entrusted with all the public funds, had abused its trusts and signally failed to achieve the public ends in view at its creation. And yet its operations had been such that the pecuniary interest of the great mass of the citizens of the State had become so blended with that of the State, and both were so much identified with the fate of this institution, that its continued existence, with its then powers and capacities, or its sudden destruction, would be alike disastrous to both.

Thus an emergency arose, which demanded conservative action on the part of the legislature, looking both to the interest of the State and to that of the citizen, which stamps these laws, in an eminent degree, with the character of remedial laws, and authorizes that construction of them which shall be most consonant to their reason and spirit, and will best suppress the mischief and advance the remedy.

At the same session of the legislature, at which the first liquidation act became a law, another act of a general and permanent character became a law, which provides that when "any corporation shall expire or cease to exist, either by its own limitation, judicial judgment of forfeiture, or by legislative act, the common law in relation to corporations shall not be in force in relation thereto; but the goods and chattels, lands, tenements, and hereditaments, and every right or profit

issuing out of or appertaining thereto, moneys, credits, and effects of such corporation, shall immediately vest in the State in trust, for the uses and purposes by said charter contemplated; and each and every and all right, upon the expiration or dissolution of said corporation, shall be, and is, in abeyance until the action of the legislature shall be had thereon, unless provision shall be made by law for the management of said corporation fund in contemplation of such dissolution." (Dig., ch. 39, § 16, p. 278, 279.) This statute indicates, as the result of legislative wisdom, a permanent general policy for the State in reference to the civil death of corporations, having, among others, two leading features, that is to say, on such dissolution, all rights which were of it, and in its favor in its life, shall vest in the State in trust, and all rights against it shall be in abeyance at the legislative will, unless special provision of law be made to the contrary; and thus excluding all coercive measures against the State, in her capacity of trustee, for the purposes contemplated by the charter of the dissolved corporation. And this general policy, so set on foot, lays a reasonable foundation for the construction of laws by analogy, which have for their manifest object the preservation and equitable distribution of the assets of such institutions, when placed by law in a state of liquidation; and persuasively urges that such laws should be so construed as to advance this policy.

And by a state of liquidation we understand that intermediate condition of a corporation, over whose life and constitution the legislature has power, in which it is placed by law, in being shorn of its powers and capacities to progress as originally designed, but left with all its powers and capacities to retrograde and close up its affairs. And especially would this analogous rule of construction seem reasonable, when it was manifest that the legislature had been superinduced to force such an institution into liquidation from conservative considerations, because of exigencies that had arisen from the abuse of powers and trusts, on the part of such corporation, to the injury of the public; and that its pecuniary affairs were thereby in an insolvent condition. For in no other way, than by allowing effective energy to such laws for the preservation and equitable distribution of the assets, could the conservative interposition of the legislature be advanced, although at the expense of a corresponding abatement of a right to proceed against such assets founded upon the general law; and especially would such a rule be not unreasonable against one whose rights lived alone in the grace of the legislature.

In the various acts of the legislative and public documents, to which we have seen, it is our province to look for a true interpretation of the law as applicable to the case before us, we learn that the bank capital was derived from two sources, to wit, from the sale of 1169 bonds, executed by the State to the bank, to be sold for money to constitute its permanent capital; 2dly. From certain specific funds, which were for the most part trust funds, in the hands of the State, and which, by 13th section of the bank charter, were to "be deposited in the principal bank, and constitute a part of the capital thereof," but providing that

the dividend declared by the bank should be pro rata carried to the credit of each of such specific funds respectively; although the aggregate of all dividends should be subject to the control and disposal of the legislature; and providing as to a portion of these specific funds, to wit, the seminary and school funds, that they might be at any time withdrawn, both principal and interest, without any action on the part of the legislature. As all these specific funds were liable to be called for by the objects for which they were created, they could not reasonably be considered as a part of the permanent capital of the bank, in the same sense that the funds arising from the sale of the State bonds might be so considered; because, to place them upon such a footing would presuppose a breach of trust on the part of the State, which cannot be be presumed.

From like sources we learn that the legislature has always regarded the bank as being in an insolvent condition from the time that it was put in liquidation, although its condition might then have been regarded by them as more sound than it has been since shown to be by various public documents. By the act of 31st January, 1843, (session acts, p. 77,) by which the bank was shorn of its powers to issue notes in discount of any check, promissory note, bill, bond, or other obligation, or to loan money in any manner whatsoever, and all its affairs were placed in the hands of a board of managers, any vacancy in whose office in the recess of the legislature to be filled by the chancellor of the district, and abolishing its officers of president, cashier, clerk, teller, and directors, and making various provisions for liquidation, it was, among other things, provided, that no person indebted to the bank should be subject to be garnisheed for the satisfaction of any debt, demand, or judgment against that institution in favor of any individual, company, or corporation whatsoever, (ib., p. 86, § 30;) and at the same time provision was made for the security and collection of all debts due the bank, and for the equitable distribution of the proceeds among various classes of creditors. At the next session, by act passed the 10th January, 1845, (session acts, p. 90,) $16,000 dollars were appropriated out of the State treasury to pay the salaries of the officers of the State Bank "as other officers of the State," and to pay judgments that had been then, or might thereafter be, obtained against the bank. And $200 were, in like manner, appropriated to pay an individual for services rendered in the collection of debts due the bank, (ib., p. 132.) And so much of the thirteenth section of the bank charter was repealed which directed, as we have seen, that certain specified funds in the custody of the State should constitute a part of its capital, (session acts, p. 95, § 19,) and these funds declared subject to appropriations by the legislature. And certain par funds then on hand in the bank, and other such to be received, were directed to be paid into the treasury to the credit of the bank on account of the surplus revenue fund; and the financial receiver at Little Rock was authorized and required, if practicable, to exchange notes of the Real Estate bank and branches then on hand, or to come on hand for State bonds sold by the State

bank, and providing for the cancellation of any such bonds so taken in.

At the next succeeding session judgments against the bank were authorized to be paid off, with judgments in her favor, or with notes of that class where the right of renewal had been forfeited, but upon certain conditions only, and among others that a judgment creditor of the bank should convey to the State, by "fee simple deed," any real estate or other valuable property that he had therefor caused to be sold by virtue of any judgment against the bank, or so much of such as would be of equal amount to that so paid him, (session act, pp. 113, 114.) And by another act of the same session, (ib., 123, 124,) it was provided, "that hereafter the title to all real estate and property of every kind purchased by the bank, or taken in payment of debts due said institution, shall vest in the State of Arkansas, and the title for real estate so taken shall be taken in the name of the State of Arkansas." And there was a further provision that the governor should be authorized to exchange any property so taken by the bank for an equal amount of bonds of the State executed for the benefit of the bank, the value to be estimated at the price allowed by the bank; and by an act passed the 11th January, 1851, all such lands on hand are directed to be sold by the State land agent. And by an act passed the 9th January, 1849, (session acts, p. 73,) all State bonds on hand in the State bank, taken in payment of debts due this institution, which were originally sold by the Real Estate bank to realize her capital, are directed to be exchanged for such bonds originally sold by the State bank, or the coupons for such; and all such State bonds or coupons so received by exchange, are directed to be cancelled; and further providing that the State bank shall not thereafter be ruled to give security for the costs of suit, but that the State shall be liable for all judgments for costs against the bank, (ib., 73.) And there are two other acts of the same session, by which money is appropriated from the treasury to redeem bonds that had been previously sold by judgment creditors of the bank, (session acts of 1849, pages 183, 184, and 204.)

There are various other provisions of some of these several acts, which, although we have considered, we do not deem it necessary particularly to specify; from all of which however, when considered together, it seems to have been manifestly the intention of the legislature, from the day when the bank was put in liquidation, to preserve the assets from waste while in process of closing up its affairs, and to distribute the same upon some scale approximating to an equitable one among all parties interested, and that the whole process of closing up and of distribution should be within its own discretion.

That the legislature had the constitution right to assume this attitude towards the bank, and all having dealings with it, we have already seen, and the only question is, whether or not they have actually so regulated and disposed of the assets of the bank as to place them beyond the reach of the complainant by judicial process; and it is to determine this question that we have been examining all these various enactments of the legislature and public documents to arrive at their

true meaning. We have seen, then, what were the leading objects of the legislature as to the assets of the bank, to wit, their equitable distribution upon a scale to be fixed by themselves, and their preservation from waste; and we have also seen in the source and object of these liquidation acts, that they were in an eminent degree remedial laws.

How, then, shall that provision be construed which enacts that no person indebted to the bank shall be subject to be garnisheed by any person having a claim or debt against the bank? Shall it be construed as simply cutting off that statutory process? What was the mischief? If we were to extend our examination no further than to the other provision of that particular enactment in which this provision is the 30th section, we should find abundant reason to doubt whether the construction should be so narrow; because in these we find a scale of priority fixed among the creditors of the bank, which could be as well disturbed by a creditor's bill as by process of garnishment. And the same remark may be made as to any advantage that it might be imagined was intended to be secured for the bank debtor on account of the currency being at that time depreciated; when, however, we look beyond this statute, and consider it in connexion with those subsequently passed relating to the assets of the bank, although we find this particular scale of priority abandoned, nevertheless we see in various enactments a steady and uniform purpose on the part of the legislature to control the outgoings, and apportion the avails of the bank assets as they themselves shall deem most equitable and just. A purpose that is directly in conflict with any right elsewhere to seize upon and appropriate such avails while in process of collection, and alike inhibits a creditor's bill from such an office as the less searching statutory process of garnishment.

Then, when the true mischief is considered, which was the insolvency of the bank, the jeopardy of public faith and public credit, of public and trust funds, and of private interests, all commingled and at hazard to an extent to call for the direct interposition of the sovereign power, in whose justice all must trust, and that power not only interposed, but in affording the remedy has signified a settled purpose himself to determine upon the outgoings of the scanty avails of this wreck of capital and of credit; it would seem to be worse than sticking to the bark to admit of a construction of the provision in question that will thwart this settled purpose. Not that a sovereign should not be powerless before right, even before a right that exists only by his own grace, but that he should be alike just to himself and to all, and especially alike just to those who confide to him their trusts.

And the same course of observations apply to the paper of the Real Estate bank, which the complainant seeks to make available. This has been turned by the legislature to the benefit of the bond holder. The financial receiver is authorized and instructed to exchange it for bonds of the State sold by the State bank, and these bonds, when so taken in, are directed to be cancelled in the executive department of the State government; and, by a like process, the bonds sold by the Real Es-

bank, and providing for the cancellation of any such bonds so taken in.

At the next succeeding session judgments against the bank were authorized to be paid off, with judgments in her favor, or with notes of that class where the right of renewal had been forfeited, but upon certain conditions only, and among others that a judgment creditor of the bank should convey to the State, by "fee simple deed," any real estate or other valuable property that he had therefor caused to be sold by virtue of any judgment against the bank, or so much of such as would be of equal amount to that so paid him, (session act, pp. 113, 114.) And by another act of the same session, (ib., 123, 124,) it was provided, "that hereafter the title to all real estate and property of every kind purchased by the bank, or taken in payment of debts due said institution, shall vest in the State of Arkansas, and the title for real estate so taken shall be taken in the name of the State of Arkansas." And there was a further provision that the governor should be authorized to exchange any property so taken by the bank for an equal amount of bonds of the State executed for the benefit of the bank, the value to be estimated at the price allowed by the bank; and by an act passed the 11th January, 1851, all such lands on hand are directed to be sold by the State land agent. And by an act passed the 9th January, 1849, (session acts, p. 73,) all State bonds on hand in the State bank, taken in payment of debts due this institution, which were originally sold by the Real Estate bank to realize her capital, are directed to be exchanged for such bonds originally sold by the State bank, or the coupons for such; and all such State bonds or coupons so received by exchange, are directed to be cancelled; and further providing that the State bank shall not thereafter be ruled to give security for the costs of suit, but that the State shall be liable for all judgments for costs against the bank, (ib., 73.) And there are two other acts of the same session, by which money is appropriated from the treasury to redeem bonds that had been previously sold by judgment creditors of the bank, (session acts of 1849, pages 183, 184, and 204.)

There are various other provisions of some of these several acts, which, although we have considered, we do not deem it necessary particularly to specify; from all of which however, when considered together, it seems to have been manifestly the intention of the legislature, from the day when the bank was put in liquidation, to preserve the assets from waste while in process of closing up its affairs, and to distribute the same upon some scale approximating to an equitable one among all parties interested, and that the whole process of closing up and of distribution should be within its own discretion.

That the legislature had the constitution right to assume this attitude towards the bank, and all having dealings with it, we have already seen, and the only question is, whether or not they have actually so regulated and disposed of the assets of the bank as to place them beyond the reach of the complainant by judicial process; and it is to determine this question that we have been examining all these various enactments of the legislature and public documents to arrive at their

true meaning. We have seen, then, what were the leading objects of the legislature as to the assets of the bank, to wit, their equitable distribution upon a scale to be fixed by themselves, and their preservation from waste; and we have also seen in the source and object of these liquidation acts, that they were in an eminent degree remedial laws.

How, then, shall that provision be construed which enacts that no person indebted to the bank shall be subject to be garnisheed by any person having a claim or debt against the bank? Shall it be construed as simply cutting off that statutory process? What was the mischief? If we were to extend our examination no further than to the other provision of that particular enactment in which this provision is the 30th section, we should find abundant reason to doubt whether the construction should be so narrow; because in these we find a scale of priority fixed among the creditors of the bank, which could be as well disturbed by a creditor's bill as by process of garnishment. And the same remark may be made as to any advantage that it might be imagined was intended to be secured for the bank debtor on account of the currency being at that time depreciated; when, however, we look beyond this statute, and consider it in connexion with those subsequently passed relating to the assets of the bank, although we find this particular scale of priority abandoned, nevertheless we see in various enactments a steady and uniform purpose on the part of the legislature to control the outgoings, and apportion the avails of the bank assets as they themselves shall deem most equitable and just. A purpose that is directly in conflict with any right elsewhere to seize upon and appropriate such avails while in process of collection, and alike inhibits a creditor's bill from such an office as the less searching statutory process of garnishment.

Then, when the true mischief is considered, which was the insolvency of the bank, the jeopardy of public faith and public credit, of public and trust funds, and of private interests, all commingled and at hazard to an extent to call for the direct interposition of the sovereign power, in whose justice all must trust, and that power not only interposed, but in affording the remedy has signified a settled purpose himself to determine upon the outgoings of the scanty avails of this wreck of capital and of credit; it would seem to be worse than sticking to the bark to admit of a construction of the provision in question that will thwart this settled purpose. Not that a sovereign should not be powerless before right, even before a right that exists only by his own grace, but that he should be alike just to himself and to all, and especially alike just to those who confide to him their trusts.

And the same course of observations apply to the paper of the Real Estate bank, which the complainant seeks to make available. This has been turned by the legislature to the benefit of the bond holder. The financial receiver is authorized and instructed to exchange it for bonds of the State sold by the State bank, and these bonds, when so taken in, are directed to be cancelled in the executive department of the State government; and, by a like process, the bonds sold by the Real Es-

tate bank, that may have been taken in by the financial receiver, are to be exchanged for bonds sold by the State bank, and these, in like manner, cancelled.

And by act, approved the 23d December, 1846, the lands were brought within the same rule of exemption by affirmative legislative action in relation to them, like that legislative action in relation to the debts due the bank, and the Real Estate bank paper, and the real estate State bonds, which we have just considered; and this was required, no less to sustain the general purpose for the legislative distribution of the avails of the assets of the bank, than to prevent their waste in the sacrifice of lands at execution sales, that had so frequently occurred, as we learn from the face of several of the acts of liquidation. And thus all the assets of the bank are placed by law beyond the reach of judicial process at the suit of the complainant; as to whom we have seen, in examining the constitutional question, the power of the legislature so to place them was clear.

But it is insisted that, nevertheless, all this is but as cobweb before the chancellor, because of alleged fraudulent combination between the bank and the State to hinder and delay creditors; since fraud vitiates every thing, and holds fraudulent things as no things. If such acts and regulations be fraudulent, it is because the law makes them so; and these are the acts and regulations of the law itself, enacted by the power that made the law of fraud, and can, therefore, with equal power unmake that law, as to these acts and regulations.

But, although denied relief by law as to the bank, why not be allowed it as against the State, who, according to the law as just declared, may be sued in chancery as well as at law? This is but raising the constitutional question in a new form, and is easily answered; because the State having interposed, not in her corporate but in her sovereign capacity, by the terms of the very contract on which the complainant would seek such relief as against the defendant, all his rights live but in grace, and his remedies exist in entreaty only.

The chancellor's arm is therefore powerless for his aid, unless he could exhibit, on his part, the guaranties of the constitution, of which, as we have seen, he has voluntarily disrobed himself, as against the State in the capacity in which she is a party to this transaction.

Upon the whole case we consider that there is no equity in the complainant's bill, and, therefore, that the chancellor erred in overruling the demurrer interposed, and rendering his decree. The decree must be reversed, and the cause remanded, with instructions to sustain the demurrers.

Filing writ of error.

And afterwards, to wit, on the 15th day of November, in the year A. D. 1851, the said James M. Curran produced the writ of the United States for the correcting of errors in said cause in this court, duly allowed by the honorable Thomas Johnson, chief justice of our supreme court, commanding that the record and proceedings aforesaid, with all

things concerning the same, be sent to the Supreme Court of the United States, and at the same time filed in the office of the clerk of our supreme court in this cause a copy of said writ of error, which is in the following words:

Copy of writ.

UNITED STATES OF AMERICA, *ss.*

The President of the United States of America, to the judges of the supreme court of Arkansas, greeting:

Because, in the record and proceedings, as also in the rendition of a decree in a certain suit, upon an appeal in chancery from the decree of the circuit court of the county of Pulaski, in the State of Arkansas, which is in the said supreme court of the State of Arkansas before you, between the State of Arkansas, the Bank of the State of Arkansas, John M. Ross, financial receiver, and David W. Carroll, bank attorney, appellants, and James M. Curran, appellee, a manifest error hath happened, to the great damage of the said James M. Curran, as by his complaint it appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the law and custom of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this fifteenth day of November,
[L. S.] in the year of our Lord one thousand eight hundred and fifty-one, and of the independence of the United States the seventy-sixth year.

WM. FIELD,
Clerk of the U. S. circuit court, for the east. dist. of Ark.
By M. S. BELL, *D. C.*

Upon which said copy of said writ of error is the following endorsement, to wit:

Allowance of Chief Justice of writ.

STATE OF ARKANSAS.

I, Thomas Johnson, chief justice of the supreme court of the State of Arkansas, do hereby allow this writ of error, and direct the clerk of

said supreme court to make out and certify the transcript of said cause as commanded.

Given under my hand, at Little Rock, this 15th day of November, A. D. 1851, and on the day of the adjournment of said court.

THOMAS JOHNSON,
Chief justice of the supreme court of Arkansas.

Filing bond.

And at the same time the said James M. Curran filed in this court in this cause his bond, which is in the following words:

Copy thereof.

In the supreme court.

JAMES CURRAN
advs.
THE STATE OF ARKANSAS, the Bank of the State of Arkansas, John M. Ross, financial receiver, and David W. Carroll, bank att'y.

Know all men by these presents, that we, James M. Curran, as principal, and George C. Watkins and William E. Woodruff, as security, of the city of Little Rock, are held and firmly bound unto the above named State of Arkansas, the Bank of the State of Arkansas, John M. Ross, and David W. Carroll, in the sum of one thousand dollars, to be paid to the said State of Arkansas, the Bank of the State of Arkansas, John M. Ross, and David W. Carroll; and for the payment whereof, well and truly to be made, we bind ourselves, and our, and each of our, heirs, executors, and administrators, jointly and severally, firmly by these presents.

Signed with our hands, and sealed with our seals, and dated this 15th day of Nov., A. D. 1851; conditioned, that whereas the above named James M. Curran hath prosecuted a writ of error to the Supreme Court of the United States, to reverse the judgment rendered by the supreme court of the State of Arkansas, in the suit there pending, on appeal in chancery from the decree of the circuit court of the county of Pulaski, in that State, in which suit the said State of Arkansas, the Bank of the State of Arkansas, John M. Ross, and David W. Carroll, were appellants, and the said James M. Curran was appellee.

Now, therefore, the condition of this obligation is such, that if the above named James M. Curran shall prosecute his said writ of error to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall become void, else to remain in full force and virtue.

JAMES M. CURRAN, [L. S.]
Per GEO. C. WATKINS, *Att'y in fact.*
GEO. C. WATKINS, [L. S.]
WM. E. WOODRUFF. [L. S.]

Signed and sealed in the presence of—

On which said bond is the following endorsement:

Approval of bond.

STATE OF ARKANSAS.

Having fixed the amount of the foregoing bond at the sum of one thousand dollars, and the sureties therein being personally well known to me, and being by me considered sufficient, I do hereby approve the said bond as sufficient; the said writ of error being lodged in the office of the clerk of the supreme court of the State of Arkansas on this day, November 15, 1851.

THOMAS JOHNSON,
Chief justice of the supreme ct. of the State of Arkansas.

In pursuance of which said writ of error, and the allowance thereof by said chief justice of our said supreme court, a record of the judgment aforesaid, with all things concerning the same, together with said writ of error annexed, is hereby, under seal of said court, openly sent to the Supreme Court of the United States accordingly.

STATE OF ARKANSAS,
In the supreme court, ss.

I, Luke E. Barber, clerk of the supreme court of the State of Arkansas, hereby certify, that the foregoing ninety-one pages contain a full, true, and complete transcript of the record of said supreme court, in the case therein, except the briefs of counsel in said cause filed.

In testimony whereof I have hereto set my hand, as clerk of said court, and affixed the seal of said court, at my office, in the [L. S.] city of Little Rock, in said State, this 21st day of November, A. D. 1851.

L. E. BARBER, *Clerk.*

Fees paid by plaintiff, viz:

For writ of error to circuit court clerk, U. S.	$2 00
Service of citation - - - - - -	3 00
L. E. Barber, clerk sup. ct., for trans., &c.	45 10

Test: L. E. BARBER, *Clerk.*

THE UNITED STATES OF AMERICA, *to wit:*

To the State of Arkansas, the Bank of the State of Arkansas, John M. Ross, financial receiver, and David W. Carroll, bank attorney, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Arkansas, at Little Rock, wherein James M. Curran is plaintiff, and you are defendants in error, to show cause, if any there be, why the judgment in the said